(26,502)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 444.

JETT BROS. DISTILLING COMPANY, PLAINTIFF IN ERROR,

vs.

CITY OF CARROLLTON.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

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a THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judges of the Court of Appeals of the State of Kentucky, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said Court of Appeals, before you or some of you, being the highest court of law or equity in said State in which a decision could be had in a suit between Jett Bros. Distilling Company, appellant, and the City of Carrollton, appellee, wherein was drawn in question the validity of an authority exercised under the State of Kentucky on the ground of its being repugnant to the Constitution of the United States, and which decision was in favor of its validity, and where a right, title, privilege and immunity were claimed under the Constitution of the United States and the decision was against such right, title, privilege and immunity specially set up and claimed by said appellant under said Constitution, a manifest error has happened to the great damage of the Jett Bros. Distilling Company as by its complaint appears;

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington in the District of Columbia on the 18th day of May next in said Supreme Court, to be then and there held, that the record and proceedings aforesaid being in-

b spected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness Honorable Edward Douglass White, Chief Justice of the United States the 19th day of April, A. D. One Thousand Nine Hundred and Eighteen.

[Seal Eastern Kty. Dist. Court, United States of America.]

J. W. MENZIES,
Clerk of the District Court of the United States
for the Eastern District of Kentucky,
By CHAS. N. WIARD, *D. C.*

Allowed by
W. E. SETTLE,
Chief Justice Kentucky Court of Appeals.

April 19, 1918.

c [Endorsed:] Filed Apr. 19, 1918. R. W. Keenan, C. C. A.
1—444

1 Court of Appeals of Kentucky.

JETT BROS. DISTILLING COMPANY, Appellant,

vs.

CITY OF CARROLLTON, Appellee.

Be it remembered that heretofore to-wit, on August 27, 1917, the appellant filed with the Clerk of the Court of Appeals, its record which is in words and figures as follows, to-wit:

2 COMMONWEALTH OF KENTUCKY:

Court of Appeals.

JETT BROS. DISTILLING COMPANY, Appellant,

vs.

CITY OF CARROLLTON, Appellee.

Statement on Appeal.

The names of the parties to this appeal are as stated in the caption.

The judgment appealed from was rendered at the April term, 1917, of the Carroll Circuit Court, to wit, on the 30th day of April, 1917, and may be found on page 157 of the transcript.

The appeal was granted below and no summons or warning order is desired.

The name- and addresses of appellee's attorneys *is* as follows:

J. A. DONALDSON & SONS,
Carrollton, Ky.;
WINSLOW & HOWE,
Carrollton, Ky..
Counsel for Appellant.

3 *Pleas.*

STATE OF KENTUCKY, *sct:*

Carroll Circuit Court.

Pleas Before the Hon. Sidney Gaines, Judge of the Carroll Circuit Court, at the Court-house, in the City of Carrollton, Kentucky, on the 30th Day of April, 1917.

Style.

Petition.

CITY OF CARROLLTON, Plaintiff,

vs.

JETT BROS. DISTILLING CO., Defendant.

Preamble.

Be it remembered that heretofore, to-wit, on the 15th day of August, 1916, the plaintiff, City of Carrollton, by its attorney-, J. A. Donaldson & Sons, filed its petition in the Clerk's office of the Carroll Circuit Court against the defendant, Jett Bros. Distilling Co., and is in words and figures as follows, to-wit:

Petition.

Carroll Circuit Court.

CITY OF CARROLLTON, Plaintiff,

vs.

JETT BROS. DISTILLING CO., Defendant.

4 Paragraph I.

The plaintiff, City of Carrollton, states that it is now and has been during all the times hereinafter stated a municipal corporation of the Fourth class, created and existing under the laws of the State of Kentucky, in the county of Carroll with power to contract and be contracted with, to sue and be sued, to defend and be defended in all the Courts in its corporate name, to-wit: City of Carrollton, and with power to assess, levy and collect taxes on all real and personal property within said City and vested with all the powers incident to such municipal corporations.

Plaintiff states that the defendant, Jett Bros. Distilling Co. is a corporation created under and by virtue of the laws of the State of Kentucky and authorized to sue and be sued, to contract and be contracted with and conduct the business of distilling spirits and storing same in its warehouses in the City of Carrollton, Carroll County, Kentucky, and in which distilled spirits were stored during the times hereinafter stated and long prior thereto and it is now the owner and proprietor of said bonded warehouses and engaged in said business with its chief office and place of business in the City of Carrollton, Ky.

Plaintiff states that by section 16 of an Ordinance of the City of Carrollton, entitled an Ordinance for the Purpose of Conforming

the Government of the City of Carrollton to the laws appli
5 cable to cities of the fourth class, duly passed by the city council of the City of Carrollton and duly adopted on th 6th day of March, 1907, and then duly published in the Carrollto News, a weekly newspaper published in the City of Carrollton, a pen alty of twenty per cent was imposed on all delinquent taxes. A duly attested copy of said section of said *section of said* ordinance is file herewith as part hereof marked "X."

Plaintiff states that the defendant, Jett Bros. Distilling Co., i liable and indebted to it for City taxes on distilled spirits containe in its warehouses in the City of Carrollton, Carroll County, Kentucky owned and occupied and controlled by defendant, with interest an penalties thereon for the years 1907, 1908, 1909, 1910, 1911, 1912 1913, 1914, 1915, 1916, as set forth and shown by the statement hereinafter set out and the tax lists and reported filed herewith and made a part hereof as hereinafter stated.

Plaintiff states that between the first day of September and the first day of October in each of the years 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, and 1915 the defendant, Jett Bros. Distilling Co., as the owner and proprietor of bonded warehouses in which distilled spirits were stored, situated in the City of Carrollton, Ky., made written statements which were subscribed and
6 sworn to by J. F. Jett, as Treasurer (the manager and chief officer) of Jett Bros. Distilling Co., to the Auditor of Public Accounts of the State of Kentucky showing the quantity and kind of spirits in said warehouses on the first day of September in each of said years, the dates when made, the County, City, Town and taxing district in which said warehouses were situated, together with the statements as to what number of barrels of whiskey the U. S. Government tax had been paid and the date of the expiration of the bonded period on that part of said spirits on which the U. S. Government tax had not been paid and the fair cash value thereof at a voluntary sale. Duly attested copies of each of said statements are filed herewith as part hereof marked "A," "B," "C," "D," "E," "F," "G," "H," "I," and "J" respectively. Plaintiff states that each of said statements or reports was submitted by the Auditor of Public Accounts to the State Board of Valuation and Assessment of the State of Kentucky which board fixed the value of said spirits and assessed same for the purpose of State, County, City, Town and taxing district taxation for each of said years as follows, to-wit: 1906 for 1907 $8.00 per barrel; 1907 for 1908 $8.00 per barrel; 1908 for 1909 $9.00 per barrel; 1909 for 1910 $9.00 per barrel; 1910 for 1911 $10.00 per barrel; 1911 for 1912 $10.00 per barrel; 1912 for 1913 $12.00 per barrel; 1913 for 1914 $12.00 per barrel; 1914 for 1915 $12.00 per barrel and 1915 for 1916 $12.00 per barrel.

7 Plaintiff states that said distilled spirits were duly assessed by said Board of Valuation and Assessment for State, County, City, Town and taxing district taxation for each of the years as hereinbefore stated and the defendant was notified by said board of the amount so fixed and of said assessment.

Plaintiff states that said distilled spirits were duly assessed by said

Board of Valuation and Assessment for State, County, City, Town and taxing district taxation for each of the years as hereinbefore stated and the defendant was notified by said board of the amount so fixed and of said assessment.

Plaintiff states that immediately after finally fixing said values in each of said years, the said Board of Valuation and Assessment duly certified to the said Auditor of Public Accounts the value of said spirits so assessed for each of said years, the said Auditor of Public Accounts duly certified to the Clerk of the Carroll County Court the amount liable for County, City, Town and taxing district taxation on said spirits by the defendant for each of said years and the date when the bonded period would expire on said spirits. A duly attested copy of each of said certified reports of the Auditor of Public Accounts of the value of said spirits so assessed for each of said years, duly certified to the Clerk of the Carroll County Court is filed herewith as part hereof marked "A1," "B1," "C1," "D1," "E1," "F1," "G1," "H1," "I1," and "J1" respectively. The aforesaid certified reports of the Auditor of Public Accounts to the Clerk of the Carroll County Court were duly filed by said Clerk in his office and each of said reports was by him certified to the proper collecting officer of the City of Carrollton, for collection.

Paragraph II.

Plaintiff states that the defendant, Jett Bros. Distilling Co., the owner and proprietor of said bonded warehouses in which said distilled spirits were stored, situated in the City of Carrollton, did on the 8th day of September, 1911, make and transmit to the Auditor of Public Accounts of the State of Kentucky a statement subscribed and sworn to by J. F. Jett, as Treasurer of Jett Bros. Distilling Co., showing the quantity and kind of spirits that had been removed and withdrawn from said warehouses during the four months next before the first day of September 1911, the years in which such spirits were assessed for County, City, Town and taxing district taxation and the County and City in which said warehouses were situated in which said spirits were stored at the time of said assessments. A duly attested copy of said report is filed herewith as part hereof marked "A2."

Plaintiff states that by said statement the defendant reported to the Auditor of Public Accounts that 102 packages of whiskey which had been in bond and stored in said warehouses since 1904 and 20 packages of whiskey which had been in bond and stored in said warehouses since 1905 and 254 packages of whiskey which had been in bond and stored in said warehouses since 1906 and 288 packages of whiskey which had been in bond and stored in said warehouses since 1907 and 50 packages of whiskey which had been in bond and stored in said warehouses since 1909 and 5 packages of whiskey which had been in bond and stored in said warehouses since 1910 had been removed and withdrawn from said warehouses during the four months next before the first day of

September 1911. Plaintiff states that all of said whiskey had been stored in said warehouses in the City of Carrollton during the times stated in said report, and that each of said packages of whiskey was one barrel. Plaintiff states that the defendant failed to make and transmit to the Clerk of the Carroll County court said statement as required by law but in lieu thereof defendant made a statement showing the withdrawal of said whiskey from said warehouses during the four months next before the first day of September, 1911, which corresponded to the statement made to the Auditor of Public Accounts which was addressed to Jas. L. Boswell, Sheriff. Plaintiff states that said statement made in lieu of the one required by law to be made to the Clerk of Carroll County Court was filed in the office of said Clerk and a duly attested copy thereof is filed herewith as part hereof marked "A3."

Plaintiff states that all of said spirits reported withdrawn from said warehouses by defendant's said statements were duly assessed for taxation for the City of Carrollton by the State Board of
10 Valuation and Assessment for each of the years said spirits were stored in said warehouses at the value hereinbefore stated, to-wit: For 1907 and 1908 $8.00 per barrel; for 1909 and 1910 $9.00 per barrel and for 1911 $10.00 per barrel.

Plaintiff states that by a resolution duly passed and duly adopted by the City Council of the City of Carrollton on June 5th, 1907 and by an Ordinance of said City entitled an Ordinance levying an ad valorem tax for the year 1907 on all taxable property in the City of Carrollton, Ky., April 1st, 1907, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1907, of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as the same appeared from the assessments and valuations made for said City for the year 1907 was duly levied. A duly attested copy of said resolution and said Ordinance is filed herewith as part hereof marked "X1" and "Y1" respectively. Plaintiff states that by a resolution duly passed and duly adopted by the Board of Council of the City of Carrollton the 1st day of July, 1908, and by an Ordinance of said City entitled An Ordinance levying an Ad Valorem Tax for the year 1908 on all taxable property in the City of Carrollton,
11 Ky., April 1st, 1908, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916 and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton a tax for the year 1908 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as the same appears from the assessments and valuations made for said City for the year 1908 was duly levied. A duly attested copy of said resolution and said ordinance is filed herewith as part hereof marked "X2" and "Y2" respectively. Plaintiff states that by a resolution duly passed and duly adopted by the Board of Council of the City

of Carrollton on the 2nd day of June 1909, and by an Ordinance of the City of Carrollton, entitled an Ordinance levying an Ad Valorem Tax for the year 1909 on all taxable property in the City of Carrollton, Ky., on April 1st, 1909, duly passed and adopted by said Council on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newpsaper published in the City of Carrollton, a tax for the year 1909 of seventy-five cents on each one hundred dollars' wor-h of taxable property in the City of Carrollton as the same appears from the assessments and valuations made for said City for the year 1909, was duly levied. A duly attested copy of said resolution and said ordi-
12 nance is filed herewith as part hereof marked "X3" and "Y3" respectively. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 1st day of June, 1910 and by an Ordinance of the City of Carrollton, an Ordinance levying an ad valorem tax for the year 1910 on all taxable property in the City of Carrollton on April 1st, 1910, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News a weekly newspaper published in the City of Carrollton, a tax for the year 1910, of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as the same appears from the assessments and valuations made for said City for the year 1910, was duly levied. A duly attested copy of said resolution and said Ordinance is filed herewith as part hereof marked "X4" and "Y4" respectively. Plaintiff states that by a resolution duly passed and duly adopted by the Board of Council of the City of Carrollton on the 7th day of June, 1911, and by an Ordinance of the City of Carrollton entitled "An Ordinance levying an Ad Valorem Tax for the year 1911 on All Taxable Property in the City of Carrollton on April 1st, 1911," duly passed and adopted by the Board of Council of the City
13 Carrollton on the 7th day of July, 1916, and duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, on the 13th day of July, 1916, a tax for the year 1911 of seventy-five cents on each one hundred dollars' worth of taxable property in the city of Carrollton as the same appears from the assessments and valuations made for said City for the year 1911, was duly levied. A duly attested copy of said resolution and said ordinance is filed herewith as part hereof marked "X5" and "Y5" respectively.

Plaintiff states that by virtue of the aforesaid resolutions and ordinances of the City of Carrollton levying a tax for each of the years 1907, 1908, 1909, 1910 and 1911 and by virtue of the assessments made for each of said years as hereinbefore stated and by virtue of the ordinances of the City of Carrollton hereinbefore referred to, the defendant having the custody of said spirits in its said bonded warehouses in the City of Carrollton during the times herein stated and by virtue of said statements of whiskey withdrawn from said warehouses hereinbefore referred to, which whiskey was so

withdrawn, the defendant became liable and indebted to plaintiff and is now liable and indebted to plaintiff in the sum of $266.09 for taxes for the years 1907, 1908, 1909, 1910 and 1911 on said spirits and the further sum of $23.52 interest on each year's assessment until September 1st, 1911 and the further sum of $21.28 eight per cent penalty on said delinquent taxes, and interest at the rate of six per cent per annum on the sum of $269.61, from Novem-
14 ber 1st, 1911 until paid and the further sum of $53.21, a further penalty of twenty per cent on said delinquent taxes.

Plaintiff states that said taxes, interest and penalties are long past due and no part thereof has been paid and plaintiff is entitled to recover of the defendant the sum of $266.09 taxes on said distilled spirits for the years 1907, 1908, 1909, 1911 and 1911 due the City of Carrollton and the further sum of $23.52 interest on each year's assessment until September 1st, 1911 and the further sum of $21.28 eight per cent penalty on said delinquent taxes and interest at the rate of six per cent per annum on the sum of $289.61 from November 1st, 1911 until paid and the further sum of $53.21, a further penalty of twenty per cent on said delinquent taxes.

Paragraph III.

Plaintiff states that the defendant, Jett Bros. Distilling Co., the owner and proprietor of said bonded warehouses in which distilled spirits were stored, situated in the City of Carrollton, did on the 10 day of January, 1912 make and transmit to the Auditor of Public Accounts of the State of Kentucky a statement subscribed and sworn to by J. F. Jett, as Treasurer of Jett Bros. Distilling Co., showing the quantity and kind of spirits that had been withdrawn from said warehouses during the four months next before the first day of January, 1912, the years in which such spirits were assessed for County, City, Town and taxing district taxation and the
15 County and City in which said warehouses were situated in which said spirits were stored at the time of said assessments. A duly attested copy of said statement is filed herewith as part hereof Marked "B2." Plaintiff states that by said statement the defendant reported to the Auditor of Public Accounts that 142 packages of whiskey which had been in bond and stored in said warehouses since 1904 and 73 packages of whiskey which had been in bond and stored in said warehouses since 1905 and 251 packages of whiskey which had been in bond and stored in warehouses since 1906 and 366 packages of whiskey which had been in bond and stored in said warehouses since 1907 and 275 packages of whiskey which had been in bond and stored in said warehouses since 1908 and 4 packages of whiskey which had been in bond and stored in said warehouses since 1910 had been removed and withdrawn from said warehouses during the four months next before the 1st day of January 1912. Plaintiff states that said spirits had been stored in said warehouses in the City of Carrollton during all the times stated in said statement and that each package was one barrel of whiskey. Plaintiff states that the defendant failed to make and transmit to

the Clerk of the Carroll County Court said statement as required by law but in lieu thereof defendant made a statement showing the withdrawal of said spirits from said warehouses during the four months next before the first day of January, 1912, which corresponded to the statement made to the Auditor of Public Accounts and which was addressed to Jas. L. Boswell, Sheriff. Plaintiff
16 states that said statement made in lieu of the one required to be made to the Clerk of the Carroll County Court was filed in the office of said Clerk and a duly attested copy thereof is filed herewith as part hereof marked "B5."

Plaintiff states that all of said spirits reported withdrawn from said warehouses by defendant's said reports and statements were assessed for taxation for the City of Carrollton by the State Board of Valuation and Assessment for each of the years said spirits were stored in said warehouses at the value hereinbefore stated, to-wit; for 1907 and 1908, $8.00 per barrel; for 1909 and 1910 $9.00 per barrel and for 1911 and 1912 $10.00 per barrel.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on June 5th, 1907, and by an Ordinance of said City entitled "An Ordinance levying an Ad Valorem Tax for the year 1907 on all Taxable Property in the City of Carrollton, Ky., April 1st, 1907," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July 1916 duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1907 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as the same appears from the assessments and valuations made for said City for the year 1907, was duly levied. Copies of said resolution and
17 said ordinance have heretofore been filed herewith marked "X1" and "Y1" respectively and said copies are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 1st day of July, 1908, and by an ordinance of the City of Carrollton entitled an Ordinance Levying an Ad Valorem Tax for the year 1908 on all taxable property in the City of Carrollton, Ky., on April 1st, 1908, duly passed and adopted by the Board of Council of the City of Carrollton, Ky. on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the city of Carrollton, a tax for the year 1908 of Seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as the same appears from the assessments and valuations made for said City for the year 1908, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X2" and "Y2" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 2nd day of June, 1908, and by an ordinance of the City of Carrollton, entitled An Ordinance levying an Ad Valorem Tax for the year 1909 on all taxable property in the City of Carrollton, Ky. on April 1st, 1909, duly passed and

adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916 and duly published in the Car-
18 rollton News, a Weekly newspaper published in the City of Carrollton on July 13th., 1916, a tax for the year 1909 of seventy-five cents on each one hundred dollars' worth of taxable property as same appears from the assessments and valuations made for said City for the year 1909, was duly levied. A duly attested copy of said resolution and said ordinance has been heretofore filed herewith marked "X3" and "Y3" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 1st day of June, 1910, and by an ordinance entitled an Ordinance Levying an Ad Valorem Tax for the year 1910 on all Taxable Property in the City of Carrollton on April 1st, 1910, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th. day of July 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton a tax for the year 1910 of seventy-five cents on each one hundred dollars' worth of taxable property as same appears from the assessments and valuations made for said City for the year 1910 was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X4" and "Y4" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 7th. day of June, 1911, and by an ordinance of the City of Carrollton entitled An Ordinance
19 Levying an Ad Valorem Tax for the year 1911 on all Taxable Property in the city of Carrollton on April 1st, 1911, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th. day of July, 1916 and on the 13th. day of July, 1916 duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1911 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said year, was duly levied. Copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X5" and "Y5" respectively and same are now made a part hereof. Plaintiff states that by an ordinance of the City of Carrollton entitled an Ordinance in Regard to Ad Valorem Tax, duly passed and adopted by the Board of Council of the City of Carrollton on the 5th. day of June, 1912 and duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1912 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1912, was duly levied. A duly attested copy of said ordinance is filed herewith as part hereof marked "X6."

Plaintiff states that by virtue of the aforesaid resolutions and ordinances of the City of Carrollton, levying a tax for each of the years 1907, 1908, 1909, 1910, 1911, 1912 and by virtue of the as-

20 sessments made for each of said years hereinbefore stated and by virtue of the ordinances of the City of Carrollton hereinbefore referred to and the defendant having the custody and control of said spirits in its warehouses in the City of Carrollton during the times herein stated and by virtue of said statements of whiskey withdrawn from said warehouses hereinbefore referred to, which whiskey was so withdrawn, the defendant became liable and indebted to plaintiff and is now liable and indebted to plaintiff in the sum of $375.38 for taxes due the City of Carrollton on said spirits for the years 1907, 1908, 1909, 1910, 1911 and 1912 and the further sum of $28.27 interest on each year's assessment until the first day of January, 1912 and the further sum of $30.03 eight per cent penalty on said delinquent taxes, and interest at the rate of six per cent per annum on the sum of $403.65 from November 1st, 1912, until paid and the further sum of $75.07 a further penalty of twenty per cent on said delinquent taxes.

Plaintiff states that said taxes, interest and penalties are long past due and no part thereof had been paid and the plaintiff is entitled to recover of the defendant the sum of $375.38 taxes on said distilled spirits due the City of Carrollton for the years 1907,
21 1908, 1909, 1910, 1911 and 1912 and the further sum of $28.27 interest on each year's assessment until the first day of January, 1912 and the further sum of $30.03 eight per cent penalty on said delinquent taxes and interest at the rate of six per cent per annum on the sum of $403.65 from November 1st, 1916 until paid and the further sum of $75.07 a further penalty of twenty per cent on said delinquent taxes.

Paragraph IV.

Plaintiff states that the defendant, Jett Bros. Distilling Co., the owner and proprietor of said bonded warehouses in which distilled spirits were stored, situated in the City of Carrollton, did on the 6 day of May, 1912 make and transmit to the Auditor of Public Accounts of the State of Kentucky a statement subscribed and sworn to by J. F. Jett, as Treasurer of Jett Bros. Distilling Co., showing the quantity and kind of spirits that had been withdrawn from said warehouses during the four months next before the first day of May, 1912, the years in which such spirits were assessed for County, City, Town and taxing district taxation and the County and City in which said warehouses were situated in which said spirits were stored at the time of said assessments. A duly attested copy of said statement is filed herewith as part hereof marked "B." Plaintiff states that by said statement the defendant reported to the Auditor of Public Accounts that 71 packages of whiskey which had been in bond and
22 stored in said warehouses since 1904 and 99 packages of whiskey which had been in bond and stored in said warehouses since 1905 and 49 packages of whiskey which had been in bond and stored in said warehouses since 1906 and 309 packages of whiskey which had been in bond and stored in said warehouses since 1907 and 398 packages of whiskey which had been in bond

and stored in said warehouses since 1909 and 30 packages of whiskey which had been in bond and stored in said warehouses since 1910 had been removed and withdrawn from said warehouses during the four months next before the 1st. day of May, 1912. Plaintiff states that said spirits had been stored in said warehouses in the City of Carrollton during the times stated in said statement and that each package was one barrel of whiskey. Plaintiff states that the defendant failed to make and transmit to the Clerk of the Carroll County Court said statement as required by law but in lieu thereof defendant made a statement showing the withdrawal of said spirits from said warehouses during the four months next before the first day of May, 1912, which corresponded to the statement made to the Auditor of Public Accounts and which was addressed to Jas. L. Boswell, Sheriff. Plaintiff states that said statement made in lieu of the one required to be made to the Clerk of the Carroll County Court was filed in the office of said Clerk and a duly attested copy thereof is filed herewith as part hereof marked "B6."

Plaintiff states that all of said spirits reported withdrawn from said warehouses by defendant's said reports and statements were assessed for taxation for the City of Carrollton by the State
23 Board of Valuation and Assessment for each of the years said spirits were stored in said warehouses at the value hereinbefore stated, to-wit: for 1907 and 1908, $8.00 per barrel; for 1909 and 1910 $9.00 per barrel and for 1911 and 1912 $10.00 per barrel.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on June 5th, 1907 and by an Ordinance of said City entitled "An Ordinance Levying an Ad Valorem Tax for the year 1907 on all Taxable Property in the City of Carrollton, Ky., April 1st, 1907," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916 and on the 13th day of July 1916 duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1907 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as the same appears from the assessments and valuations made for said City for the year 1907, was duly levied. Copies of said resolution and said ordinance have heretofore been filed herewith marked "X1" and "Y1" respectively and said copies are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 1st day of July, 1908 and by an ordinance of the City of Carrollton entitled an Ordinance levying an ad valorem tax for the year 1908 on all taxable property in the City of Carrollton, Ky.,
24 on April 1st. 1908, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1908 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as the same appears from the assessments and valuations made for said City for the year 1908, was duly levied. Duly attested copies of

said resolution and said ordinance have been hereinbefore filed herewith marked "X2" and "Y2" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 2nd day of June, 1909, and by an ordinance of the City of Carrollton entitled An Ordinance Levying an Ad Valorem Tax for the year 1909 on all taxable property in the City of Carrollton, Ky., on April 1st, 1909, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton on July 13th, 1916, a tax for the year 1909 of seventy-five cents on each hundred dollars' worth of taxable property as same appears from the assessments and valuations made for said City for the year 1909, was duly levied. A duly attested copy of said resolution and said ordinance has been heretofore filed herewith marked "X3" and "Y3" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on
25 the 1st day of June, 1910 by an ordinance entitled An Ordinance Levying an Ad Valorem Tax for the year 1910 on all Taxable property in the City of Carrollton on April 1st, 1910, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1910 of seventy-five cents on each one hundred dollars' worth of taxable property as same appears from the assessments and valuations made for said City for the year 1910, was duly levied. Duly attested copies of said resolution and said ordinance have been her-inbefore filed herewith marked "X4" and "Y4" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of June, 1911, and by an ordinance of the City of Carrollton entitled an Ordinance Levying an Ad Valorem Tax for the year 1911 on all Taxable Property in the City of Carrollton on April 1st, 1911, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1911 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said year was duly levied. Copies of said resolution and said ordinance have
26 been hereinbefore filed herewith marked "X5" and "Y5" respectively and same are now made a part hereof. Plaintiff states that by an ordinance of the City of Carrollton, entitled An Ordinance in Regard to Ad Valorem Tax, duly passed and adopted by the Board of Council of the City of Carrollton on the 5th day of June, 1912, and duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1912 of seventy-five cents on each one hundred dollars' worth of tax-

able property in the City of Carrollton as same appears from the assessments and valuations made for the year 1912, was duly levied. A duly attested copy of said ordinance has been hereinbefore filed herewith marked "X6" and same is now made a part hereof.

Plaintiff states that by virtue of the aforesaid resolutions and ordinances of the City of Carrollton levying a tax for each of the years 1907, 1908, 1909, 1910, 1911, 1912 and by virtue of the assessments made for each of said years hereinbefore stated and by virtue of the ordinances of the City of Carrollton hereinbefore referred to and the defendant having the custody and control of said spirits in its warehouses in the City of Carrollton during the times herein stated and by virtue of said statements of whiskey withdrawn from said warehouses hereinbefore referred to, which whiskey plaintiff says was so withdrawn, the defendant became liable and indebted to plaintiff and is now liable and indebted to plaintiff in the sum of $286.32 for taxes due the City of Carrollton on said spirits for the years 1907, 1908, 1909, 1910, 1911 and 1912 and the further sum of $22.17 interest on each year's assessment until the
27 first day of May, 1912, and the further sum of $22.90 eight per cent penalty on said delinquent taxes, and interest at the rate of six per cent per annum on the sum of $308.49 from November 1st, 1912, until paid and the further sum of $57.28 a further penalty of twenty per cent on said delinquent taxes.

Plaintiff states that said taxes, interest and penalties are long past due and no part thereof has been paid and the plaintiff is entitled to recover of the defendant the sum of $286.32 taxes on said distilled spirits due the City of Carrollton for the years 1907, 1908, 1909, 1910, 1911 and 1912 and the further sum of $22.17 interest on each year's assessment until the first day of May, 1912, and the further sum of $22.90 eight per cent penalty on said delinquent taxes and interest at the rate of six per cent per annum on the sum of $308.49 from November 1st, 1912, until paid and the further sum of $57.28 a further penalty of twenty per cent on said delinquent taxes.

Paragraph V.

Plaintiff states that the defendant, Jett Bros. Distilling Co., the owner and proprietor of said bonded warehouses in which distilled spirits were stored, situated in the City of Carrollton, did on the 5th day of September, 1912, make and transmit to the Auditor of Public Accounts of the State of Kentucky a statement subscribed and sworn to by J. F. Jett, as Treasurer of Jett Bros. Distilling Co., showing the quantity and kind of spirits that had been withdrawn from said warehouses during the four months next before the first day of September, 1912, the years in which such spirits were assessed for
County, City, Town and taxing district taxation and the
28 County and City in which said warehouses were situated in which said spirits were stored at the time of assessments. A duly attested copy of said statement is filed herewith as part hereof marked "B4." Plaintiff states that by said statement the defendant

reported to the Auditor of Public Accounts that 45 packages of whiskey which had been in bond and stored in said warehouses since 1904 and 92 packages of whiskey which had been in bond and stored in said warehouses since 1905 and 42 packages of whiskey which had been in bond and stored in said warehouses since 1906 and 206 packages of whiskey which had been in bond and stored in said warehouses since 1907 and 333 packages of whiskey which had been in bond and stored in said warehouses since 1909 and 86 packages of whiskey which had been in bond and stored in said warehouses since 1910 and 1 package of whiskey which had been stored in said warehouse since 1911 had been removed and withdrawn from said warehouses during the four months next before the 1st day of September, 1912. Plaintiff states that said spirits had been stored in said warehouses in the City of Carrollton during all the times stated in said statement and that each package was one barrel of whiskey. Plaintiff states that the defendant failed to make and transmit to the Clerk of the Carroll County Court said statement as required by law but in lieu thereof defendant made a statement showing the withdrawal of said spirits from said warehouses during the four months next before the first day of September, 1912, which corresponded to the statement made to the Auditor of Public Accounts and which was addressed to Jas. L. Boswell, Sheriff.
29 Plaintiff states that said statement made in lieu of the one required to be made to the Clerk of the Carroll County Court was filed in the office of said Clerk and a duly attested copy thereof is filed herewith as part hereof marked "B7."

Plaintiff states that all of said spirits reported withdrawn from said warehouses by defendant's said reports and statements were assessed for taxation for the City of Carrollton by the State Board of Valuation and Assessment for each of the years said spirits were stored in said warehouses at the value hereinbefore stated to-wit: for 1907 and 1908 $8.00 per barrel; for 1909 and 1910 $9.00 per barrel and for 1911 and 1912 $10.00 per barrel.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on June 5th, 1907, and by an Ordinance of said City entitled "An Ordinance Levying an Ad Valorem Tax for the Year 1907 on all Taxable Property in the City of Carrollton, Ky., April 1st, 1907," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1907 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as the same appears from the assessments and valuations made for said City for the year 1907, was duly levied. Copies of said resolution and said ordinance have heretofore been filed herewith marked
30 "X1" and "Y1" respectively and said copies are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 1st day of July, 1908, and by an ordinance of the City of Carrollton entitled an Ordinance Levying an Ad Valorem Tax for the year

1908 on all Taxable Property in the City of Carrollton, Ky., on April 1st, 1908, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1908 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as the same appears from the assessments and valuations made for said City for the year 1908, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X2" and "Y2" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 2nd day of June, 1909, and by an ordinance of the City of Carrollton entitled An Ordinance Levying an Ad Valorem Tax for the year 1909 *and* all Taxable Property in the City of Carrollton, Ky., on April 1st, 1909, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton on July 13th, 1916, a tax for the year 1909 of seventy-five cents on each one hundred dollars' worth of taxable property as same appears from the assessments and valuations made for said City for the
31 year 1909 was duly levied. A duly attested copy of said resolution and said ordinance has been heretofore filed herewith marked "X3" and "Y3" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 1st day of June, 1910, and by an ordinance entitled An Ordinance Levying an Ad Valorem Tax for the year 1910 on all taxable property in the City of Carrollton on April 1st, 1910, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1910 of seventy-five cents on each one hundred dollars' worth of taxable property for the year 1910, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X4" and "Y4" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of June, 1911, and by an ordinance of the City of Carrollton entitled An Ordinance Levying an Ad Valorem Tax for the year 1911 on all Taxable Property in the City of Carrollton on April 1st, 1911, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City
32 of Carrollton, a tax for the year 1911 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said year, was duly levied. Copies of said resolution and said ordinance have been hereinbefore filed herewith

marked "X5" and "Y5" respectively and same are now made a part hereof. Plaintiff states that by an ordinance of the City of Carrollton, entitled An Ordinance in Regard to Ad Valorem Tax, duly passed and adopted by the Board of Council of the City of Carrollton on the 5th day of June, 1912, and duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1912 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1912, was duly levied. A duly attested copy of said ordinance has been hereinbefore filed herewith marked "X6" and is now made a part hereof.

Plaintiff states that by virtue of the aforesaid resolutions and ordinances of the City of Carrollton levying a tax for each of the years 1907, 1908, 1909, 1910, 1911, 1912 and by virtue of the assessments made for each of said years hereinbefore stated and by virtue of the ordinances of the City of Carrollton hereinbefore referred to and the defendant having the custody and control of said spirits in its said warehouses in the City of Carrollton during the times herein stated and by virtue of said statements of whiskey with-drawn from said warehouses hereinbefore referred to, which whiskey plaintiff says was so with-drawn, the defendant became liable and indebted to plaintiff and is now liable and indebted to plaintiff in the sum of $222.94 for taxes due the City of Carrollton on said spirits for the years 1907, 1908, 1909, 1910, 1911 and 1912 and the further sum of $12.87 interest on each year's assessment until the first day of September, 1912, and the further sum of $17.83 eight per cent penalty on said delinquent taxes, and interest at the rate of six per cent per annum on the sum of $235.81 from November 1st, 1912, until paid and the further sum of $44.58 a further penalty of twenty per cent on said delinquent taxes. Plaintiff states that said taxes, interest and penalties are long past due and no part thereof has been paid and the plaintiff is entitled to recover of the defendant the sum of $222.94 taxes on said distilled spirits due the City of Carrollton for the years 1907, 1908, 1909, 1910, 1911 and 1912 and the further sum of $12.87 interest on each year's assessment until the first day of September, 1912, and the further sum of $17.83 eight per cent penalty on said delinquent taxes and interest at the rate of six per cent per annum on the sum of $235.81 from November 1st, 1912, until paid and the further sum of $44.58 a further penalty of twenty per cent on said delinquent taxes.

33

Paragraph VI.

Plaintiff states that the defendant, Jett Bros. Distilling Co., the owner and proprietor of said bonded warehouses in which said distilled spirits were stored, situated in the City of Carrollton, did on the 25th day of February, 1913, make and transmit to the Auditor of Public Accounts of the State of Kentucky a statement subscribed and sworn to by J. F. Jett, as Treasurer of Jett Bros. Distilling Co., showing the quantity and kind of spirits that had been withdrawn from said warehouses during the four months

next before the first day of January, 1913, the years in which such spirits were assessed for County, City, Town and taxing district taxation and the County and City in which said warehouses were situated in which said spirits were stored at the time of said assessments. A duly attested copy of said statement is filed herewith as part hereof marked "C2." Plaintiff states that by said statement the defendant reported to the Auditor of Public Accounts that 75 packages of whiskey which had been in bond and stored in said warehouses since 1905 and 82 packages of whiskey which had been in bond and stored in said warehouses since 1906 and 122 packages of whiskey which had been in bond and stored in said warehouses since 1907 and 287 packages of whiskey which had been in bond and stored in said warehouses since 1909 and 96 packages of whiskey which had been in bond and stored in said warehouses since 1910 and 55 packages of whiskey which had been in bond and stored in said warehouses since 1911 had been removed and withdrawn from said warehouses during the four months next before the first day of January, 1913. Plaintiff states that all of said whiskey had been stored in said warehouses in the City of Carrollton during the times stated in said report and that each of said packages contained one barrel
35 of whiskey. Plaintiff states that the defendant failed to make and transmit to the Clerk of the Carroll County Court said statement as required by law but in lieu thereof defendant made a statement showing the withdrawal of said whiskey from said warehouses during the four months next before the first day of January, 1913, which corresponded to the statement made to the Auditor of Public Accounts and which was addressed to Jas. L. Boswell, Sheriff. Plaintiff states that said statement made in lieu of the one required to be made to the Clerk of the Carroll County Court was filed in the office of said Clerk and a duly attested copy thereof is filed herewith as part hereof marked "C5." Plaintiff states that all of said spirits reported withdrawn from said warehouses by defendant's said statements were duly assessed for taxation for the City of Carrollton by the State Board of Valuation and Assessment for each of the years said spirits were stored in said warehouses at the value hereinbefore stated, to-wit: for 1907 and 1908 $8.00 per barrel; for 1909 and 1910 $9.00 per barrel; for 1911 and 1912 $10.00 per barrel and for 1913 $12.00 per barrel.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on June 5th, 1907, and by an Ordinance of said City entitled An Ordinance Levying an Ad Valorem Tax for the Year 1907 on All Taxable Property in the City of Carrollton, Ky., April 1st, 1907, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly pub-
36 lished in the Carrollton News, a weekly newspaper, published in the City of Carrollton, a tax for the year 1907 of seventy-five cents on each one hundred dollars' worth of taxable property as same appears from the assessments and valuations made for said City for the year 1907, was duly levied. A duly attested copy of said resolution and said ordinance has been heretofore filed herewith

marked "X1" and "Y1" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 1st day of July, 1908, and by an ordinance of the City of Carrollton entitled An Ordinance Levying an Ad Valorem Tax for the year 1908 on all Taxable Property in the City of Carrollton, Ky., April 1st, 1908, duly passed and adopted by the Board of Council of said City July 7th, 1916, and duly published on July 13th, 1916, in the Carrollton News, a weekly newspaper, published in the City of Carrollton, a tax for the year 1908 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1908, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X2" and "Y2" respectively and same are now made a part hereof.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 2nd. day of June, 1909 and by an ordinance entitled An Ordinance Levying an
37 Ad Valorem Tax for the year 1909 on all Taxable Property in the City of Carrollton, Ky. on April 1st, 1909, duly passed by the Board of Council of the City of Carrollton on the 7th. day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1909 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1909 for said City was duly levied. A duly attested copy of said resolution and said ordinance has been hereinbefore filed herewith marked "X3" and "Y3" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 1st. day of July, 1910, and by an ordinance entitled An Ordinance Levying an Ad Valorem Tax for the year on all Taxable property in the City of Carrollton, Ky. on April 1st, 1910, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th. day of July, 1916, and duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton on the 13th. day of July, 1916, a tax for the year 1910 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1910 for said City, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X4" and "Y4" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 7th. day of June, 1911, and by an Ordinance entitled "An Ordinance Levying an Ad Valorem Tax on All Taxable Property in the City of Carrollton for the year 1911 on April 1st, 1911," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th. day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News,

a weekly newspaper published in the City of Carrollton, a tax fo
the year 1911 of seventy-five cents on each one hundred dollar
worth of taxable property in the City of Carrollton as same appea
from the assessments and valuations made for said City for th
year 1911, was duly levied for the year 1911. A duly attested cop
of said resolution and said ordinance has been hereinbefore file
herewith marked "X5" and "Y5" respectively and same are no
made a part hereof. Plaintiff states that by an Ordinance of th
City of Carrollton entitled an Ordinance in regard to ad valore
tax, duly passed and adopted by the Board of Council of said Cit
on the 5th. day of June, 1912, and duly published in the Carrollto
News, a weekly newspaper published in said City, a tax of seventy
five cents on each one hundred dollars' worth of taxable property i
the City of Carrollton as same appears from the assessments an
valuations made for said City for the year 1912 was duly levied fo
the year 1912. A duly attested copy of said ordinance has been her
inbefore filed herewith marked "X6" and same is now made a pa
hereof.

Plaintiff states that by a resolution duly passed and adopted by th
Board of Council of the City of Carrollton on the 18th. da
39 of June, 1913, and by an ordinance of the City of Carrollto
entitled "An Ordinance Levying an Ad Valorem tax for th
year 1913 on all Taxable Property in the City of Carrollton, Ky
April 1st, 1913," duly passed and adopted by the Board of Counci
of said city, on the 7th. day of July, 1916, and on the 13th. day o
July, 1916, duly published in the Carrollton News, a weekly news
paper, published in the City of Carrollton, a tax for the year 191
of seventy-five cents on each one hundred dollars' worth of taxable
property in the City of Carrollton as same appears from the asses
ments and valuations made for the year 1913 for said City was duly
levied. A duly attested copy of said resolution and said ordinanc
is filed herewith as part hereof marked "X7" and "Y7" respectively.

Plaintiff states that by virtue of the aforesaid resolutions and or
dinances of the City of Carrollton levying a tax for each of the years
1907, 1908, 1909, 1910, 1911, 1912 and 1913 and by virtue of the
assessments made for each of said years as hereinbefore referred to
and the defendant having the custody and control of said spirits
during the times herein stated and by virtue of said statements of
whiskey withdrawn from said warehouses hereinbefore referred to,
which whiskey plaintiff says was so withdrawn, the defendant be
came liable and indebted to plaintiff in the sum of $251.14 for taxes
due the City of Carrollton for the years 1907, 1908, 1909, 1910,
1911, 1912 and 1913, on said spirits and the further sum of $18.93
interest on each year's assessment until the first day of Janu-
40 ary, 1913, and the further sum of $20.09 eight per cent pen-
alty on said delinquent taxes and interest at the rate of six
per cent per annum on the sum of $270.07 from November 1st, 1913,
until paid and the further sum of $50.22 a further penalty of twenty
per cent on said delinquent taxes.

Plaintiff states that all of said taxes, interest and penalties are long
past due and no part thereof has been paid and plaintiff is entitled

to recover of the defendant the sum of $251.14 taxes on said spirits due the City of Carrollton for the years 1907, 1908, 1909, 1910, 1911, 1912 and 1913 and the further sum of $18.93 interest on each year's assessment of said spirits as aforesaid until the first day of January, 1913, and the further sum of $20.09 a penalty of eight per cent on said delinquent taxes and interest at the rate of six per cent per annum on the sum of $270.07 from November 1st, 1913, until paid and the further sum of $50.22 a further penalty of twenty per cent on said delinquent taxes.

Paragraph VII.

Plaintiff states that the defendant, Jett Bros. Distilling Co., the owner and proprietor of said bonded warehouses in which said distilled spirits were stored, situated in the City of Carrollton, Ky., did on the 7th. day of May, 1913, make and trans- to the Auditor of Public Accounts of the State of Ky., a statement subscribed and sworn to by J. F. Jett, Treasurer of Jett Bros. Distilling Co., showing the quantity and kind of spirits that had been withdrawn from said warehouses during the four months next before the first day of May, 1913, the years in which such spirits were assessed for County,
41 City, Town and taxing district taxation, and the County and City in which said warehouses were situated in which said spirits were stored at the time of said assessments. A duly attested copy of said statement is filed herewith as part hereof marked "C3." Plaintiff states that by said statement the defendant reported to the Auditor of Public Accounts that 48 packages of whiskey which had been in bond and stored in said warehouses since 1905 and 62 packages of whiskey which had been in bond and stored in said warehouses since 1906 and 54 packages of whiskey which had been in bond and stored in said warehouses since 1907 and 184 packages of whiskey which had been in bond and stored in said warehouses since 1909 and 141 packages of whiskey which had been in bond and stored in said warehouses since 1910 and 49 packages of whiskey which had been in bond and stored in said warehouses since 1911 had been removed and withdrawn from said warehouses during the four months next before the first day of May, 1913, and said whiskey had been so withdrawn during said four months. Plaintiff states that all of said whiskey had been stored in said warehouses in the City of Carrollton during the times stated in said report and that each of said packages was *pme* barrel of whiskey. Plaintiff states that the defendant failed to make and transmit to the Clerk of the Carroll County Court said statement as required by law but in lieu thereof defendant made a statement showing the withdrawal of said whiskey from said warehouses during the four months next before the first day of May, 1913, which corresponded to the statement made to the Auditor of Public Accounts and which was addressed to
42 Jas. L. Boswell, Sheriff. Plaintiff states that said statement made in lieu of the one required by law to be made to the Clerk of the Carroll County Court was filed in the office of said Clerk and a duly attested copy thereof is filed herewith as a part hereof

marked "C6." Plaintiff states that all of said spirits reported withdrawn from said warehouses by defendant's said statements were duly assessed for taxation for the City of Carrollton by the State Board of Valuation and Assessment for each of the years said spirits were stored in said warehouses at the value hereinbefore stated, to-wit: for 1907 and 1908, $8.00 per barrel: for 1909 and 1910 $9.00 per barrel; for 1911 and 1912 $10.00 per barrel and for 1913 $12.00 per barrel.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on June 5th, 1907, and by an Ordinance of said City entitled An Ordinance levying an Ad Valorem Tax for the year 1907 on All Taxable Property in the City of Carrollton, Ky. April 1st, 1907, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th. day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper, published in the City of Carrollton a tax for the year 1907 of seventy-five cents on each one hundred dollars' worth of taxable property as same appears from the assessments and valuations made for said City for the year 1907 was duly levied.

43 A duly attested copy of said resolution and said ordinance has been heretofore filed herewith marked "X1" and "Y1" respectively and same are now made a part hereof.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton the 1st day of July, 1908, and by an ordinance of the City of Carrollton entitled An Ordinance Levying an Ad Valorem Tax for the year 1908 on all taxable property in the City of Carrollton, Ky. April 1st, 1908, duly passed and adopted by the Board of Council of said City July 7, 1916, and duly published on July 13th, 1916, in the Carrollton News, a weekly newspaper, published in the City of Carrollton, a tax for the year 1908 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1908, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X2" and "Y2" respectively and same are now made a part hereof.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 2nd day of June, 1909 and by an ordinance entitled An Ordinance Levying an Ad Valorem Tax for the year 1909 on All Taxable Property in the City of Carrollton, Ky. on April 1st, 1909, duly passed by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and the 13th day of July, 1916, duly published in the Carrollton

44 News, a weekly newspaper published in the City of Carrollton, a tax for the year 1909 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1909 for said City, was duly levied. A duly attested copy of said resolution and said ordinance has been hereinbefore filed herewith marked "X3" and "Y3" respectively and same are now made a part hereof. Plaintiff states that by a resolution

luly passed and adopted by the Board of Council of the City of Carrollton on the 1st day of July, 1910 and by an ordinance entitled An Ordinance Levying an Ad Valorem Tax for the year 1910 on all Taxable property in the City of Carrollton, Ky. on April 1st, 1910, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton on the 13th day of July, 1916, a tax for the year 1910 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1910 for said City, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X4" and "Y4" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of June, 1911, and by an Ordinance entitled "An Ordinance Levying an Ad Valorem Tax on All Taxable Property in the City of Carrollton for the year 1911 on April 1st, 1911," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1911 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1911 was duly levied for the year 1911. A duly attested copy of said resolution and said ordinance has been hereinbefore filed herewith marked "X5" and "Y5" respectively and same are now made a part hereof. Plaintiff states that by An Ordinance of the City of Carrollton entitled an Ordinance in Regard to Ad Valorem Tax duly passed and adopted by the Board of Council of said City on the 5th day of June, 1912 and duly published in the Carrollton News, a weekly newspaper published in said City, a tax of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1912 was duly levied for the year 1912. A duly attested copy of said ordinance has been hereinbefore filed herewith marked "X6" and same is now made a part hereof.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 17th day of June, 1913 and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem tax for the year 1913 on all Taxable Property in the City of Carrollton, Ky. April 1st, 1913," duly passed and adopted by the Board of Council on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper, published in the City of Carrollton, a tax for the year 1913 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1913 for said City was duly

levied. A duly attested copy of said resolution and said ordinance has heretofore been filed herewith marked "X7" and "Y7" respectively, and same are now made a part hereof.

Plaintiff states that by virtue of the aforesaid resolutions and ordinances of the City of Carrollton levying a tax for each of the years 1907, 1908, 1909, 1910, 1911, 1912, and 1913 and by virtue of the assessments made for each of said years as hereinbefore stated and by virtue of the ordinances of the City of Carrollton hereinbefore referred to and the defendant having the custody and control of said spirits during the times herein stated and by virtue of said statements of whiskey withdrawn from said warehouses hereinbefore referred to, which whiskey plaintiff says was so withdrawn, the defendant became liable and indebted to plaintiff in the sum of $176.44 for taxes due the City of Carrollton for the years 1907, 1908, 1909, 1910, 1911, 1912, and 1913 on said spirits and the further sum of $14.55 interest on each year's assessment until the first day of May, 1913 and the further sum of $14.11 eight per cent penalty on said delinquent taxes and interest at the rate of
47 six per cent per annum on the sum of $190.99 from November 1st, 1913 until paid and the further sum of $35.28 a further penalty of twenty per cent on said delinquent taxes.

Plaintiff states that all of said taxes, interest and penalties are long past due and no part thereof has been paid and plaintiff is entitled to recover of the defendant the sum of $176.44 taxes on said spirits due the City of Carrollton for the years 1907, 1908, 1909, 1910, 1911, 1912 and 1913 and the further sum of $14.55 interest on each year's assessment until the first day of May, 1913, and the further sum of $14.11 a penalty of eight per cent on said delinquent taxes and interest at the rate of six per cent per annum on the sum of $190.99 from November 1st, 1913 until paid and the further sum of $35.28 a further penalty of twenty per cent on said delinquent taxes.

Paragraph VIII.

Plaintiff states that the defendant, Jett Bros. Distilling Co., the owner and proprietor of said bonded warehouses in which said distilled spirits were stored situated in the City of Carrollton, Ky., did on the 5th day of September, 1913, make and transmit to the Auditor of Public Accounts of the State of Ky., a statement subscribed and sworn to by J. M. Jett, Treasurer of Jett Bros. Distilling Co., showing the quantity and kind of spirits that had been withdrawn from said warehouses during the four months next before the first day of September, 1913, the years in which such spirits were assessed for County, City, Town and taxing district taxation
48 and the County and City in which said warehouses were situated in which said spirits were stored at the time of said assessments. A duly attested copy of said statement is filed herewith as part hereof marked "C4." Plaintiff states that by said statement the defendant reported to the Auditor of Public Accounts that 73 packages of whiskey which had been in bond and stored in said

warehouses since 1905 and 88 packages of whiskey which had been in bond and stored in said warehouses since 1906 and 59 packages of whiskey which had been in bond and stored in said warehouses since 1907 and 246 packages of whiskey which had been in bond and stored in said warehouses since 1909 and 396 packages of whiskey which had been in bond and stored in said warehouses since 1910 and 128 packages of whiskey which had been in bond and stored in said warehouses since 1911 and 2 packages of whiskey which had been stored in said warehouses since 1912, had been removed and withdrawn rrom said warehouses and said whiskey had been so withdrawn during the four months next before the first day of September, 1913. Plaintiff states that all of said whiskey had been stored in said warehouses in the City of Carrollton during the times states in said report and that each of said packages was one barrel of whiskey. Plaintiff states that the defendant failed to make and transmit to the Clerk of the Carroll County Court said statement as required by law but in lieu thereof defendant made a statement showing the withdrawal of said whiskey from said warehouses during the four months next before the first day of September, 1913, which corresponded to the statement made to the Auditor of Public Accounts and which was addressed to Jas. L. Boswell, Sheriff. Plaintiff states that said statement made in lieu of the one required by law to be made to the Clerk of the Carroll County Court was filed in the office of said Clerk and a duly attested copy thereof is filed herewith as part hereof marked "C7."

Plaintiff states that all of said spirits reported withdrawn from said warehouses by defendant's said statements were duly assessed for taxation for the City of Carrollton by the State Board of Valuation and Assessment for each of the years said spirits were stored in said warehouses at the value hereinbefore stated, to-wit: For 1907 and 1908 $8.00 per barrel; for 1909 and 1910 $9.00 per barrel; for 1911 and 1912 $10.00 per barrel and for 1913 $12.00 per barrel.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on June 5th, 1907, and by an ordinance of said City entitled An Ordinance levying an Ad Valorem Tax for the year 1907 on All Taxable property in the City of Carrollton, Ky., April 1st, 1907, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper, published in the City of Carrollton, a tax for the year 1907, of seventy-five cents on each one hundred dollars' worth of taxable property as same appears from the assessments and valuations made for said City for the year 1907, was duly levied. A duly attested copy of said resolution and said ordinance has been heretofore filed herewith marked "X1" and "Y1" respectively and same are now made a part hereof.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 1st day of July, 1908, and by an ordinance of the City of Carrollton entitled an Ordinance Levying an Ad Valorem Tax for the year 1908 on all

Taxable Property in the City of Carrollton, Ky., April 1st, 1908, duly passed and adopted by the Board of Council of said City July 7th, 1916, and duly published on July 13th, 1916, in the Carrollton News, a weekly newspaper, published in the City of Carrollton, a tax for the year 1908 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1908, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X2" and "Y2" respectively and same are now made a part hereof.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 2nd day of June, 1909, and by an ordinance entitled An Ordinance Levying an Ad Valorem Tax for the year 1909 on All Taxable Property in the City of Carrollton, Ky., on April 1st, 1909, duly passed by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published
51 in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1909, of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1909 for said City, was duly levied. A duly attested copy of said resolution and said ordinance has been hereinbefore filed herewith marked "X3" and "Y3" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 1st day of July, 1910, and by an ordinance entitled An Ordinance levying an Ad Valorem Tax for the year 1910 on all Taxable Property in the City of Carrollton, Ky., on April 1st, 1910, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton on the 13th day of July, 1916, a tax for the year 1910 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1910 for said City, was duly levied. Duly attested copies of said resolutions and said ordinance have been hereinbefore filed herewith marked "X4" and "Y4" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of June, 1911, and by an Ordinance entitled "An Ordinance Levying an Ad Valorem Tax on All Taxable Property in the
52 City of Carrollton for the year 1911 on April 1st, 1911," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1911 of seventy-five cents on each one hundred dollars' worth of

taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1911, was duly levied for the year 1911. A duly attested copy of said resolutions and said ordinance has been hereinbefore filed herewith marked "X3" and "Y3" respectively and same are now made a part hereof. Plaintiff states that by An Ordinance of the City of Carrollton entitled an Ordinance in Regard to Ad Valorem Tax, duly passed and adopted by the Board of Council of said City on the 5th day of June, 1912, and duly published in the Carrollton News, a weekly newspaper published in said City, a tax of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1912 was duly levied for the year 1912. A duly attested copy of said ordinance has been hereinbefore filed herewith marked "X6" and same is now made a part hereof.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 13th day of June, 1913, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem tax for the year
53 1913 on all Taxable Property in the City of Carrollton, Ky., April 1st, 1913," duly passed and adopted by the Board of Council on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper, published in the City of Carrollton, a tax for the year 1913 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1913 for said City, was duly levied. A duly attested copy of said resolution and said ordinance has been hereinbefore filed herewith marked "X7" and "Y7" respectively, and same are now made a part hereof.

Plaintiff states that by virtue of the aforesaid resolutions and ordinances of the City of Carrollton levying a tax for each of the years 1907, 1908, 1909, 1910, 1911, 1912 and 1913, and by virtue of the assessments made for each of said years as hereinbefore stated and by virtue of the ordinances of the City of Carrollton hereinbefore referred to and the defendant having the custody and control of said spirits during the times herein stated and by virtue of said statements of whiskey withdrawn from said warehouses hereinbefore referred to, which whiskey plaintiff says was withdrawn, the derendant became liable and indebted to plaintiff in the sum of $306.10 for taxes due the City of Carrollton for the years 1907, 1908, 1909, 1910, 1911, 1912 and 1913 on said spirits and the further sum of $25.72 interest on each year's assessment until the first day of September, 1913, and the further sum of $24.48 eight per cent penalty on said delinquent taxes and interest at
54 the rate of six per cent per annum on the sum of $331.82 from November 1st, 1913, until paid and the further sum of $61.22 a further penalty of twenty per cent on said delinquent taxes.

Plaintiff states that all of said taxes, interest and penalties are long past due and no part thereof has been paid and plaintiff is

entitled to recover of the defendant the sum of $306.10 taxes on said spirits due the City of Carrollton for the years 1907, 1908, 1909, 1910, 1911, 1912 and 1913, and the further sum of $25.72 interest on each year's assessment until the first day of September, 1913, and the further sum of $24.48 a penalty of eight per cent on said delinquent taxes and interest the rate of six per cent per annum on the sum of $331.82 from November 1st, 1913, until paid and the further sum of $61.22 a further penalty of twenty per cent on said delinquent taxes.

Paragraph IX.

Plaintiff states that the defendant, Jett Bros. Distilling Co., the owner and proprietor of said bonded warehouses in which distilled spirits were stored situated in the City of Carrollton, did on the — day of January, 1914, make and transmit to the Auditor of Public Accounts of the State of Kentucky, a statement subscribed and sworn to by J. F. Jett, Treasurer of Jett Bros. Distilling Co., showing the quantity and kind of spirits that had been withdrawn from said warehouses during the four months next before the first day of January, 1914, the years in which such spirits were assessed
55 for County, City, Town and taxing district taxation and the County and City in which said warehouses were situated in which said spirits were stored at the time of said assessments. A duly attested copy of said statement is filed herewith as part hereof marked "D2." Plaintiff states that by said statement the defendant reported to the Auditor of Public Accounts that 44 packages of whiskey which had been in bond and stored in said warehouses since 1906 and 62 packages of whiskey which had been in bond and stored in said warehouses since 1907 and 242 packages of whiskey which had been in bond and stored in said warehouses since 1909 and 475 packages of whiskey which had been in bond and stored in said warehouses since 1910 and 258 packages of whiskey which had been in bond and stored in said warehouses since 1911 and 48 packages of whiskey which had been in bond and stored in said warehouses since 1912 had been removed and withdrawn from said warehouses during the four months next before the first day of January, 1914, and all of said whiskey had been so withdrawn. Plaintiff states that all of said spirits were stored in said warehouses in the City of Carrollton during all the times stated in said statement and that each of said packages was one barrel of whiskey. Plaintiff states that the defendant failed to make and transmit to the Clerk of Carroll Circuit Court said statement as required by law but in lieu thereof the defendant made a statement showing the withdrawal of said spirits from said warehouses during the four months next before the first day of January, 1914, which statement corresponded to the statement made to the Auditor of Public Accounts. Said statement was addressed to Jas. L. Boswell, Sheriff. Plaintiff states that said statement made
56 in lieu of the one required to be made to the Clerk of the Carroll County Court was filed in the office of the Clerk of

Carroll County Court and a duly attested copy thereof is filed herewith as part hereof marked "D5."

Plaintiff states that all of said whiskey reported withdrawn from said warehouses by defendant's said statements was duly assessed for taxation for the City of Carrollton by the State Board of Valuation and Assessment for each of the years, 1907, 1908, 1909, 1910, 1911, 1912, 1913 and 1914, during which time said spirits were stored in said warehouses at the value hereinbefore stated to-wit: for 1907 and 1908 $8.00 per barrel; for 1909 and 1910 $9.00 per barrel; for 1911 and 1912 $10.00 per barrel and for 1913 and 1914 $12.00 per barrel.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on June 5th, 1907, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1907 on all Taxable Property in the City of Carrollton, Ky., April 1st, 1907," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1907 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as the same appears from the assessments and valuations made for the City of Carrollton for the year
57 1907, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X1" and "Y1" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on July 1, 1908, and by an ordinance entitled "An Ordinance Levying an Ad Valorem Tax for the year 1908 on all taxable property in the City of Carrollton, Ky., April 1st, 1908," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper, published in the City of Carrollton, a tax for the year 1908 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1908, was duly levied. A duly attested copy of said resolution and said ordinance has been heretofore filed herewith marked "X2" and "Y2" respectively and same are now made a part hereof.

Plaintiff states that by resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 2nd day of June, 1909, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1909 on all Taxable Property in the City of Carrollton on April 1st, 1909," duly passed and adopted by the Board of Council of the City of Carrollton on July 7th, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly news-
58 paper published in the City of Carrollton, tax for the year 1909 of seventy-five cents on each one hundred dollars'

worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1909, was duly levied. A duly attested copy of said resolution and said ordinance has been heretofore filed herewith marked "X3" and "Y3" respectively and said attested copies are now made a part hereof.

Plaintiff states that by a resolution duly passed by the Board of Council of the City of Carrollton on the 1st day of June, 1910, and by an ordinance of the City of Carrollton, entitled "An Ordinance Levying an Ad Valorem Tax for the year 1910 on all Taxable property in the City of Carrollton on April 1st, 1910," duly passed and adopted by the Board of Council of the City of Carrollton on July 7th, 1916, and on July 13th, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1910 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1910, was duly levied. Duly attested copies of said resolution and said ordinance have heretofore been filed herewith marked "X4" and "Y4" respectively and same are now made a part hereof.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of June, 1911, and by an ordinance of the City of Carrollton
59 entitled "An Ordinance Levying an Ad Valorem Tax for the year 1911 on all taxable property in the City of Carrollton, Ky., April 1st, 1911," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1911 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as the same appears from the assessments and valuations made for said City for the year 1911, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked respectively "X5" and "Y5" and same are now made a part hereof.

Plaintiff states that by an ordinance of said City entitled "An Ordinance in Regard to Ad Valorem Tax" duly passed and adopted by the Board of Council of the City of Carrollton on June 5th, 1912, and duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1912 of seventy-five cents on each one hundred dollars' worth of taxable property in the city of Carrollton as same appears from the assessments and valuations made for said City for the year 1912, was duly levied. A duly attested copy of said ordinance has been hereinbefore filed herewith marked "X6" and "Y6" and same is now made a part hereof.

60 Plaintiff states that by a resolution passed and adopted by the Board of Council of the City of Carrollton on June 13,

1913, and by an Ordinance entitled "An Ordinance Levying an Ad Valorem Tax for the year 1913 on all Taxable property in the City of Carrollton, Ky. on April 1st, 1913," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th. day of July, 1916, and on the 13th. day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, tax for the year 1913 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1913 for said City, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X7" and "Y7" respectively and same are now made a part hereof.

Plaintiff states that by a resolution of the Board of Council of the City of Carrollton duly passed and adopted on the 10th. day of June, 1914, and by an Ordinance of the City of Carrollton entitled "An Ordinance levying an Ad Valorem tax for the year 1914 on all Taxable Property in the City of Carrollton April 1st, 1914," duly passed and adopted by said Council on the 7th. day of July, 1916, and on the 13th. day of July, 1916 duly published in the Carrollton News, a weekly newspaper, published in the City of Carrollton, a tax for the year 1914 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as the same appears
61 from the assessments and valuations made for said City for the year 1914, was duly levied. A duly attested copy of said resolution and said ordinance is filed herewith as part hereof marked "X8" and "Y9" respectively.

Plaintiff states that by virtue of the aforesaid resolution and ordinances of the City of Carrollton levying a tax for each of the years 1907, 1908, 1909, 1910, 1911, 1912, 1913 and 1914, and by virtue of the assessments made for each of said years as hereinbefore stated and by virtue of the ordinance of the City of Carrollton hereinbefore referred to and the defendant having the custody of said distilled spirits in its warehouses in the City of Carrollton during the times stated in said reports and by virtue of said statements of whiskey withdrawn from said warehouses hereinbefore referred to which whiskey plaintiff says was so withdrawn, the defendant became liable and indebted to plaintiff and is now liable and indebted to plaintiff in the sum of $385.60 for taxes on said spirits for the years 1907, 1908, 1909, 1910, 1911, 1912, 1913 and 1914 and the further sum of $22.48 interest on each year's assessment until the first day of January, 1914, and the further sum of $30.84 a penalty of eight per cent on said deliquent taxes and interest at the rate of six per cent per annum on the sum of $408.08 from November 1st, 1914, until paid and the sum of $77.12 a further penalty of twenty per cent on said delinquent taxes. Plaintiff states that no part of said taxes, interest or penalties has been paid and same are long past due and plaintiff is en-
62 titled to recover of the defendant the sum of $385.60 taxes on said spirits for the years 1907, 1908, 1909, 1910, 1911, 1912, 1913 and 1914 and the sum of $22.48 interest on said taxes from the date of each year's assessment until the first day of January 1914 and

the sum of $30.84 eight per cent penalty on said delinquent taxes and the sum of $77.12 a further penalty of twenty per cent on said delinquent taxes and interest at the rate of six per cent per annum on the sum of $408.08 from November 1st, 1914 until paid.

Paragraph X.

Plaintiff states that the defendant, Jett Bros. Distilling Co., the owner and proprietor of said bonded warehouses in which distilled spirits were stored situated in the City of Carrollton, did on the 8th day of May, 1914, make and transmit to the Auditor of Public Accounts of the State of Kentucky, a statement subscribed and sworn to by J. F. Jett, Treasurer of Jett Bros. Distilling Co., showing the quantity and kind of spirits that had been withdrawn from said warehouses during the four months next before the first day of May, 1914, the years in which such spirits were assessed for County, City, Town and taxing district taxation and the County and City in which said warehouses were situated in which said spirits were stored at the time of said assessments. A duly attested copy of said statement is filed herewith as part hereof marked "D3." Plaintiff states that by said statement the defendant reported to the Auditor of Public Accounts that 41 packages of whiskey which had been
63 in bond and stored in said warehouses since 1906 and 44 packages of whiskey which had been in bond and stored in said warehouses since 1907 and 119 packages of whiskey which had been in bond and stored in said warehouses since 1909 and 345 packages of whiskey which had been in bond and stored in said warehouses since 1910 and 337 packages of whiskey which had been in bond and stored in said warehouses since 1911 and 66 packages of whiskey which had been in bond and stored in said warehouses since 1912 had been removed and withdrawn from said warehouses during the four months next before the first day of May, 1914. Plaintiff states that all of said spirits were stored in said warehouses in the City of Carrollton during all the times stated in said statement and that each of said packages was one barrel of whiskey. Plaintiff states that the defendant failed to make and transmit to the Clerk of the Carroll Circuit Court said statement as required by law but in lieu thereof the defendant made a statement showing the withdrawal of said spirits from said warehouses during the four months next before the first day of May, 1914, which statement corresponded to the statement made to the Auditor of Public Account. Said statement was addressed to Jas. L. Boswell, Sheriff. Plaintiff states that said statement made in lieu of the one required to be made to the Clerk of the Carroll County Court was filed in the office of the Clerk of the Carroll County Court and a duly attested copy thereof is filed herewith as part hereof marked "D6."

64 Plaintiff states that all of said whiskey reported withdrawn from said warehouses by defendant's said statements was duly assessed for taxation for the City of Carrollton by the State Board of Valuation and Assessment for each of the years 1907, 1908, 1909, 1910, 1911, 1912, 1913 and 1914 during which time said spirits

were stored in said warehouses at the value hereinbefore stated to-wit: For 1907 and 1908 $8.00 per barrel; for 1909 and 1910 $9.00 per barrel; for 1911 and 1912 $10.00 per barrel and for 1913 and 1914 $12.00 per barrel:

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on June 5th. 1907 and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1907 on all Taxable Property in the City of Carrollton, Ky. April 1st, 1907," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th. day of July, 1916 and on the 13th day of July 1916 duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1907 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as the same appears from the assessments and valuations made for the City of Carrollton for the year 1907, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X1" and "Y1" respectively and same
65 are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on July 1, 1908 and by an ordinance entitled "An Ordinance Levying an Ad Valorem Tax for the year 1908 on all taxable property in the City of Carrollton, Ky. April 1st, 1908," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th. day of July, 1916 and on the 13th. day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1908 of seventy-five on each one hundred dollars' worth of taxable property in the City of Carrollton as the same appears from the assessments and valuations made for the City of Carrollton for the year 1907, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X1" and "Y1" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on July 1, 1908, and by an ordinance entitled "An Ordinance Levying an Ad Valorem Tax for the year 1908 on all taxable property in the City of Carrollton, Ky. April 1st, 1908," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th. day of July, 1916, and on the 13th. day of July, 1916 duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1908 of seventy-five cents on each one hundred dollars' worth of taxable property in
66 the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1908, was duly levied. A duly attested copy of said resolution and said ordinance has been heretofore filed herewith marked "X2" and "Y2" respectively and same are now made a part hereof.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 2nd day of June, 1909, and by an ordinance of the City of Carrollton entitled "An

Ordinance Levying an Ad Valorem Tax for the year 1909 on all Taxable Property in the City of Carrollton on April 1st, 1909," duly passed and adopted by the Board of Council of the City of Carrollton on July 7th, 1916, and on the 13th day of July 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1909 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1909, was duly levied. A duly attested copy of said resolution and said ordinance has been heretofore filed herewith marked "X3" and "Y3" respectively and said attested copies are now made a part hereof.

67 Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 1st day of June, 1910, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the Year 1910 on all Taxable Property in the City of Carrollton on April 1st, 1910," duly passed and adopted by the Board of Council of the City of Carrollton on July 7th, 1916, and on July 13th, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1910 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1910, was duly levied. Duly attested copies of said resolution and said ordinance have heretofore been filed herewith marked "X4" and "Y4" respectively and same are now made a part hereof.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of June, 1911, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1911 on all taxable property in the City of Carrollton, Ky., April 1st, 1911," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1911 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as the same appears from the assessments and valuations made for said City for the year

68 1911, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked respectively "X5" and "Y5" and same are now made a part hereof.

Plaintiff states that by an ordinance of said City entitled "An Ordinance in Regard to Ad Valorem Tax" duly passed and adopted by the Board of Council of the City of Carrollton on June 5th, 1912, and duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1912 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1912, was duly levied.

duly attested copy of said ordinance has been hereinbefore filed herewith marked "X6" and same is now made a part hereof.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on June 13th, 1913, and by an ordinance entitled "An Ordinance Levying an Ad Valorem Tax for the year 1913 on all Taxable property in the City of Carrollton, Ky., on April 1st, 1913," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1913 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1913 for said City, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked
69 "X7" and "Y7" respectively and same are now made a part hereof.

Plaintiff states that by a resolution of the Board of Council of the City of Carrollton duly passed and adopted on the 10th day of June, 1914, and by an Ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1914 on all taxable property in the City of Carrollton April 1st, 1914," duly passed and adopted by said Council on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1914 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as the same appears from the assessments and valuations made for said City for the year 1914, was duly levied. A duly attested copy of said resolution and said ordinance has hereinbefore been filed herewith marked "X8" and "Y9" respectively and same are now made a part hereof.

Plaintiff states that by virtue of the aforesaid resolutions and ordinances of the City of Carrollton levying a tax for each of the years 1907, 1908, 1909, 1910, 1911, 1912, 1913 and 1914 and by virtue of the assessments made for each of said years as hereinbefore stated and by virtue of the ordinances of the City of Carrollton hereinbefore referred to and the defendant having the custody of said distilled spirits in its warehouses in the City of Carrollton during the times
70 stated in said reports and by virtue of said statements of whiskey withdrawn from said warehouses hereinbefore referred to, which whiskey plaintiff says was so withdrawn, the defendant became liable and indebted to plaintiff and is now liable and indebted to plaintiff in the sum of $306.04 for taxes on said spirits for the years 1907, 1908, 1909, 1910, 1911, 1912, 1913 and 1914 and the further sum of $20.68 interest on each year's assessment until the first day of May, 1914, and the further sum of $24.48, a penalty of eight per cent on said delinquent taxes and interest at the rate of six per cent per annum on the sum of $330.52 from November 1st, 1914, until paid and the sum of $61.20, a further penalty of twenty per cent on said delinquent taxes. Plaintiff states that no part of said taxes, interest or penalties has been paid and

same are long past due and plaintiff is entitled to recover of the defendant the sum of $306.04 taxes on said spirits for the years 1907, 1908, 1909, 1910, 1911, 1912, 1913 and 1914 and the sum of $20.68 interest on said taxes from the date of each year's assessment until the first day of May, 1914, and the sum of $24.48 eight per cent penalty on said delinquent taxes and the sum of $61.20 further penalty of twenty per cent on said delinquent taxes and interest at the rate of six per cent per annum on the sum of $330.52 from November 1st, 1914, until paid.

Paragraph XI.

Plaintiff states that the defendant, Jett Bros. Distilling Co., the owner and proprietor of said bonded warehouses in which distilled spirits were stored situated in the City of Carrollton, did on the 8 day of September, 1914, make and transmit to the Auditor of Public Accounts of the State of Kentucky a statement subscribed and sworn to by J. F. Jett, Treasurer of Jett Bros. Distillint Co., showing
71 the quantity and kind of spirits that had been withdrawn from said warehouses during the four months next before the first day of September, 1914, the years in which such spirits were assessed for County, City, town and taxing district taxation and the County and City in which said warehouses were situated in which said spirits were stored at the time of said assessments. A duly attested copy of said statement is filed herewith as part hereof marked "D4." Plaintiff states that by said statement the defendant reported to the Auditor of Public Accounts that 17 packages of whiskey which had been in bond and stored in said warehouses since 1906 and 39 packages of whiskey which had been in bond and stored in said warehouses since 1907 and 135 packages of whiskey which had been in bond and stored in said warehouses since 1909 and 256 packages of whiskey which had been in bond and stored in said warehouses since 1910 and 442 packages of whiskey which had been in bond and stored in said warehouses since 1911 and 57 packages of whiskey which had been in bond and stored in said warehouses since 1913 had been removed and withdrawn from said warehouses during the four months next before the first day of September, 1914. Plaintiff states that all of said spirits were stored in said warehouses in the City of Carrollton during all the times stated in said statement and that each of said packages was one barrel of whiskey. Plaintiff states that the defendant failed to make and transmit to the Clerk of the Carroll Circuit Court said statement as required by law but in lieu thereof the defendant made a statement showing the withdrawal of said spirits from said warehouses during the four months next before the first day of September, 1914, which statement corresponded to the statement made to the Auditor of Public Accounts. Said statement was addressed to Jas. L. Bowe, Sheriff. Plaintiff states that said statement made in lieu of the one required to be made to the Clerk of the Carroll County Court was filed in the office of the Clerk of the Carroll County Court and
72

duly attested copy thereof is filed herewith as part hereof marked "D7."

Plaintiff states that all of said whiskey reported withdrawn from said warehouses by defendant's said statements was duly assessed for taxation for the City of Carrollton by the State Board of Valuation and Assessment for each of the years 1907, 1908, 1909, 1910, 1911, 1912, 1913 and 1914 during which times said spirits were stored in said warehouses at the value hereinbefore stated to-wit: for 1907 and 1908 $8.00 per barrel; for 1909 and 1910 $9.00 per barrel; for 1911 and 1912 $10.00 per barrel and for 1913 and 1914 $12.00 per barrel.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on June 5th, 1907, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the Year 1907 on all Taxable Property in the City of Carrollton, Ky., April 1st, 1907," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1907 of seventy-five cents on each one hundred dollars' worth of taxable property in the
73 City of Carrollton as the same appears from the assessments and valuations made for the City of Carrollton for the year 1907 was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X1" and "Y1" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on July 1, 1908, and by an ordinance entitled "An Ordinance Levying an Ad Valorem Tax for the year 1908 on all taxable property in the City of Carrollton, Ky., April 1st, 1908," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1908 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1908, was duly levied. A duly attested copy of said resolution and said ordinance has been heretofore filed herewith marked "X2" and "Y2" respectively and same are now made a part hereof.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 2nd day of June, 1909, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the Year 1909 on all Taxable Property in the City of Carrollton on April 1st, 1909," duly passed and adopted by the Board of Council of the City
74 of Carrollton on July 7th, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1909 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the

assessments and valuations made for said City for the year 1909, w
duly levied. A duly attested copy of said resolution and said ord
nance has been heretofore filed herewith marked "X3" and "Y3
respectively and said attested copies are now made a part hereof.

Plaintiff states that by a resolution duly passed by the Board
Council of the City of Carrollton on the 1st day of June, 1910, an
by an ordinance of the City of Carrollton entitled "An Ordinan
Levying an Ad Valorem Tax for the Year 1910 on all Taxable Pro
erty in the City of Carrollton on April 1st, 1910," duly passed an
adopted by the Board of Council of the City of Carrollton on Ju
7th, 1916, and July 13th, 1916, duly published in the Carrollto
News, a weekly newspaper published in the City of Carrollton, a ta
for the year 1910 of seventy-five cents on each one hundred dollar
worth of taxable property in the City of Carrollton as same appea
from the assessments and valuations made for said City for the ye
1910 was duly levied. Duly attested copies of said resolution an
said ordinance have heretofore been filed herewith marked "X4
and "Y4" respectively and same are now made a part hereo

75 Plaintiff states that by a resolution duly passed and adopte
by the Board of Council of the City of Carrollton on the 7t
day of June, 1911 and by an ordinance of the City of Carrollto
entitled "An Ordinance Levying an Ad Valorem Tax for the ye
1911 on all taxable property in the City of Carrollton, Ky. Apr
1st, 1911" duly passed and adopted by the Board of Council of th
City of Carrollton on the 7th day of July, 1916 and on the 13th da
of July, 1916 duly published in the Carrollton News, a weekly new
paper published in the City of Carrollton, a tax for the year 191
of seventy-five cents on each one hundred dollars' worth of taxabl
property in the City of Carrollton as the same appears from the a
sessments and valuations made for said City for the year 1911, wa
duly levied. Duly attested copies of said resolution and said ord
nance have been hereinbefore filed herewith marked respectively
"X5" and "Y5" and same are now made a part hereof.

Plaintiff states that by an ordinance of said City entitled "An
Ordinance in Regard to Ad Valorem Tax" duly passed and adopte
by the Board of Council of the City of Carrollton on June 5th, 191
and duly published in the Carrollton News, a weekly newspaper pub
lished in the City of Carrollton, a tax for the year 1912 of seventy
five cents on each one hundred dollars' worth of taxable property i
the City of Carrollton as same appears from the assessments and
valuations made for said City for the year 1912, was duly levied.
A duly attested copy of said ordinance has been hereinbefore file
herewith marked "X6" and same is now made a part hereof.

76 Plaintiff states that by a resolution duly passed and adopte
by the Board of Council of the City of Carrollton on June
13, 1913 and by an Ordinance entitled "An Ordinance Levying an
Ad Valorem Tax for the year 1913 on all Taxable Property in the
City of Carrollton, Ky. on April 1st, 1913," duly passed and adopte
by the Board of Council of the City of Carrollton on the 7th day o
July, 1916 and on the 13th day of July, 1916, duly published in
the Carrollton News, a weekly newspaper published in the City o

Carrollton, a tax for the year 1913 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1913 for said City, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X7" and "Y7" respectively and same are now made a part hereof.

Plaintiff states that by a resolution of the Board of Council of the City of Carrollton duly passed and adopted on the 10th day of June, 1914, and by an ordinance of the city of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1914 *and* all Taxable property in the City of Carrollton April 1st, 1914," duly passed and adopted by said council on the 7th day of July, 1916 and on the 13th day of July, 1916 duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1914 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as the same appears from the assessments and valuations made for said City for the year 1914, was duly levied. A duly attested copy of said resolution and said ordinance *have* been hereinbefore filed herewith marked "X8" and "Y9" respectively and same are now made part hereof.

Plaintiff states that by virtue of the aforesaid resolutions and ordinances of the City of Carrollton levying a tax for each of the years 1907, 1908, 1909, 1910, 1911, 1912, 1913 and 1914 and by virtue of the assessments made for each of said years as hereinbefore stated and by virtue of the ordinances of the City of Carrollton hereinbefore referred to and the defendant having the custody of said distilled spirits in its warehouses in the City of Carrollton during the times stated in said reports and by virtue of said statements of whiskey withdrawn from said warehouses hereinbefore referred to which whiskey plaintiff says was so withdrawn, the defendant became liable and indebted to plaintiff in the sum of $291.52 for taxes on said spirits for the years 1907, 1908, 1909, 1910, 1911, 1912, 1913 and 1914 and the further sum of $21.88 interest on each year's assessment until the first day of September, 1914, and the further sum of $23.31 a penalty of *eighty* per cent per annum on the sum of $313.30 from November 1st, 1914, until paid and the sum of $58.30 a further penalty of twenty per cent on said delinquent taxes. Plaintiff states that no part of said taxes, interest or penalties has been paid and same are long past due and plaintiff is entitled to recover of the defendant the sum of $291.52 taxes on said spirits for the years 1907, 1908, 1909, 1910, 1911, 1912, 1913 and 1914 and the sum of $21.88 interest on said taxes from the date of each year's assessment until the first day of May, 1914, and the sum of $23.31 eight per cent penalty on said delinquent taxes and the sum of $58.30 further penalty of twenty per cent on said delinquent taxes and interest at the rate of six per cent per annum on the sum of $313.30 from November 1st, 1914 until paid.

Paragraph XII.

Plaintiff states that the defendant, Jett Bros. Distilling Co., th
owner and proprietor of bonded warehouses in which said distille
spirits were stored situated in the City of Carrollton, did on the -
day of January, 1915 make and transmit to the Auditor of Publi
Public Accounts of the State of Kentucky a statement subscribe
and sworn to by J. F. Jett, Treasurer of Jett Bros. Distilling Co
showing the quantity and kind of spirits that had been withdraw
from said warehouses during the four months next before the fir
day of January, 1915, the years in which such spirits were assesse
for County, City, Town and Taxing District taxation and the Count
and City in which said warehouses were situated in which said spiri
were stored at the time of said assessments. A duly attested copy o
said statement is filed herewith as part hereof marked "E2." Plain
tiff states that by said statements the defendant reported to the Audi
tor of Public Accounts that 18 packages of whiskey which had bee
in bond and stored in said warehouses since 1907 and 99 package
of whiskey which had been in bond and stored in said warehouse
since 1909 and 239 packages of whiskey which had been in bon
and stored in said warehouses since 1910 and 787 package
79 of whiskey which had been in bond and stored in said ware
houses since 1911 and 102 packages of whiskey which ha
been in bond and stored in said warehouses since 1912 and 2 pack
ages of whiskey which had been in bond and stored in said ware
houses since 1913 and 5 packages of whiskey which had been i
bond and stored in said warehouses since 1914 had been remove
and withdrawn from said warehouses during the four months nex
before the first day of January 1915. Plaintiff states that sai
spirits had been stored in said warehouses in the City of Carrollto
during the times stated in said statement and each of said package
of whiskey was one barrel of whiskey. Plaintiff states that the de
fendant failed to make and transmit to the Clerk of the Carro
County Court said statement as required by law but in lieu thereo
defendant made a statement showing the quantity and kind o
spirits that had been removed and withdrawn from said warehouse
during the four months next before the first day of January 191
which corresponded to the statement made to the Auditor of Publi
Accounts and which was addressed to J. E. Robertson, Sheriff.

Plaintiff states that said statement made in lieu of the one re
quired by law to be made to the Clerk of the Carroll County Cour
was filed in the office of the Clerk of the Carroll County Court and a
duly attested copy thereof is filed herewith as part hereof marke
"E5."

Plaintiff states that all of said spirits reported withdrawn fro
said warehouses by defendant's said reports and statements were duly
assessed for taxation for the City of Carrollton by the Stat
80 Board of Valuation and Assessment for each of the years sai
spirits were stored in said warehouses at the value herein
before stated, to-wit: For 1908 $8.00 per barrel; for 1909 and 191

$9.00 per barrel; for 1911 and 1912 $10.00 per barrel; and for 1913, 1914 and 1915 $12.00 per barrel.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 1st day of July, 1908, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1908 on all Taxable Property in the City of Carrollton April 1st, 1908," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1908 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1908 for said City, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X2" and "Y2" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 2nd day of June, 1909, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1909 on all Taxable Property in the City of Carrollton, Ky., on April 1st, 1909," duly passed and adopted by the Board of Council of the City of
81 Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1908 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1908 for said City, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X2" and "Y2" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 2nd day of June, 1909, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1909 on all Taxable property in the City of Carrollton, Ky., on April 1st, 1909," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1909 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1909, was duly levied. A duly attested copy of said resolution and said ordinance has been hereinbefore filed herewith marked "X3" and "Y3" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed by the Board of Council of the City of Carrollton on June 1st, 1910, and by an ordinance of said City entitled "An Ordinance Levying an Ad

Valorem Tax for the year 1910 on all Taxable Property in the City of Carrollton on April 1st, 1910," duly passed and
82 adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1910 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1910, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X4" and "Y4" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of June, 1911, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1911 on all Taxable Property in the City of Carrollton, Ky., on April 1st, 1911," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1911 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1911 was duly levied. A duly attested copy of said resolution and said ordinance of the City of Carrollton entitled "An Ordinance in regard to Ad Valorem Tax" duly passed and adopted by the Board of Council of
83 the City of Carrollton on June 5th, 1912, and duly published in the Carrollton News, a weekly newspaper, published in the City of Carrollton, a tax for the year 1912 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1912, was duly levied. A duly attested copy of said ordinance has been hereinbefore filed herewith marked "X6" and same is now made a part hereof. Plaintiff states that by a resolution of the City of Carrollton duly passed and adopted by the Board of Council of the City of Carrollton on the 18th day of June, 1913, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1913 on all Taxable Property in the City of Carrollton on April 1st, 1913," duly passed and adopted by the Board of Council of the City of Carrollton on July 7th, 1916, and duly published in the Carrollton News July 13, 1916, a tax for the year 1913 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1913 for said City, was duly levied. A duly attested copy of the resolution and ordinance levying said tax has been heretofore filed herewith marked "X7" and "Y7" respectively and same are now made a part hereof. Plaintiff states that by a resolution of the City of Carrollton duly passed by the Board of Council of the City of Carrollton on the 10th day of June,

1914, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1914 on all Taxable Property in the City of Carrollton on April 1st,
84 1914," duly passed and adopted by the Board of Council of the City of Carrollton on the 8th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1914 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1914 for said City, was duly levied. A duly attested copy of said resolution and said ordinance has been hereinbefore filed herewith marked "X8" and "Y9" respectively and same are now made a part hereof. Plaintiff states that by a resolution of the City of Carrollton duly passed and adopted by the Board of Council of the City of Carrollton on June 10th, 1915, and by an ordinance of said City entitled "An Ordinance Levying an Ad Valorem Tax for the year 1915 on all Taxable Property in the City of Carrollton, Ky., on April 1st, 1915," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper, published in the City of Carrollton, a tax for the year 1915 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1915, was duly levied. A duly attested copy of said resolution and said ordinance is filed herewith as part hereof marked "X10" and "Y10" respectively.

Plaintiff states that by virtue of the aforesaid resolutions and ordinances of the City of Carrollton levying a tax for the years 1908, 1909, 1910, 1911, 1912, 1913, 1914 and 1915, and by
85 virtue of the assessments made for each of said years as hereinbefore stated and by virtue of the ordinance of the City of Carrollton hereinbefore referred to, the defendant having the custody of said distilled spirits in its warehouses in the City of Carrollton during the times stated in said statements and by virtue of said statements of whiskey withdrawn from said warehouses hereinbefore referred to, which whiskey plaintiff says was so withdrawn, the defendant became liable and indebted to plaintiff and is now liable and indebted to plaintiff in the sum of $459.48 for taxes for the years 1908, 1909, 1910, 1911, 1912, 1913, 1914 and 1915 on said spirits and the further sum of $26.19 interest on each year's assessment until the first day of January, 1915, and the further sum of $36.76 eight per cent penalty on said delinquent taxes and interest at the rate of six per cent per annum from November 1, 1915, until paid on the sum of $485.77 and the further sum of $91.91 a further penalty of twenty per cent on said delinquent taxes. Plaintiff states that said taxes, interest and penalties are long past due and no part thereof has been paid and plaintiff is entitled to recover of the defendant the sum of $459.48 taxes for

the years 1908, 1909, 1910, 1911, 1912, 1913, 1914 and 1915 o
said spirits and the further sum of $26.19 interest on each year
assessment until the first day of January, 1915, and the furthe
sum of $36.76 penalty of eight per cent on said delinquent tax
and interest at the rate of six per cent per annum on the sum o
$85.77 from November 1st, 1915, until paid and the further sum
of $91.91 a further penalty of twenty per cent.

86 Paragraph XIII.

Plaintiff states that the defendant, Jett Bros. Distilling Co.
the owner and proprietor of bonded warehouses in which said di
tilled spirits were stored situated in the City of Carrollton, did on th
6 day of May, 1915, make and transmit to the Auditor of Public A
counts of the State of Kentucky a statement subscribed and sworn t
by J. J. Jett, Treasurer of Jett Bros. Distilling Co. showing th
quantity and kind of spirits that had been withdrawn from said ware
houses during the four months next before the first day of May
1915, the years in which such spirits were assessed for County, City
Town and Taxing District taxation and the County and City i
which said warehouses were situated in which said spirits were
stored at the time of said assessments. A duly attested copy of said
statement is filed herewith as part hereof marked "E3." Plaintiff
states that by said statement the defendant reported to the Auditor o
Public Accounts that 17 packages of whiskey which had been in
bond and stored in said warehouses since 1907 and 57 packages which
had been in bond and stored in said warehouses since 1909 and 12
packages of whiskey which had been in bond and stored in said
warehouses since 1910 and 956 packages of whiskey which had been
in bond and stored in said warehouses since 1911 and 41 packages of
whiskey which had been in bond and stored in said warehouses since
1912 and 3 packages of whiskey which had been in bond and stored
in said warehouses since 1913 had been removed and withdrawn from
said warehouses during the four months next before the first day of
May, 1915. Plaintiff states that said spirits had been stored in
87 said warehouses in the City of Carrollton during the time
stated in said statement and each of said packages of whiskey
was one barrel of whiskey. Plaintiff states that the defendant failed
to make and transmit to the Clerk of Carroll County Court said state-
ment as required by law but in lieu thereof defendant made a state-
ment showing the quantity and kind of spirits that had been removed
and withdrawn from said warehouses during the four months next
before the first day of May, 1915 which corresponded to the state-
ment made to the Auditor of Public Accounts and which was ad-
dressed to J. E. Robertson, Sheriff.

Plaintiff states that said statement made in lieu of the one required
by law to be made to the Clerk of Carroll County Court was filed in
the office of the Clerk of the Carroll County Court and a duly attested
copy thereof is filed herewith as part hereof marked "E6."

Plaintiff states that all of said spirits reported withdrawn from
said warehouses by defendant's said reports and statements were duly

assessed for taxation for the City of Carrollton by the Board of Valuation and Assessment for each of the years said spirits were stored in said warehouses at the value hereinbefore stated, to-wit; for 1908, $8.00 per barrel; for 1909 and 1910 $9.00 per barrel; for 1911 and 1912 $10.00 per barrel and for 1913, 1914 and 1915, $12.00 per barrel.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 1st. day of July, 1908 and by an ordinance of the City of Carrollton entitled
88 "An Ordinance Levying an Ad Valorem Tax for the year 1908 on all Taxable Property in the City of Carrollton April 1st, 1908," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th. day of July, 1916 and on the 13th day of July, 1916 duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1908 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1908 for said City was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X2" and "Y2" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 2nd. day of June, 1909 and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1909 on all Taxable Property in the City of Carrollton, Ky. on April 1st, 1909" duly passed and adopted by the Board of Council of the City of Carrollton on the 7th. day of July, 1916 and on the 13th. day of July, 1916 duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1909 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1909, was duly levied. A duly attested copy of said resolution and ordinance has been hereinbefore filed
89 herewith marked "X3" and "Y3" respectively and same are now made a part hereof.

Plaintiff states that by a resolution duly passed by the Board of Council of the City of Carrollton on June 1st, 1910, and by an ordinance of said City entitled "An Ordinance Levying an Ad Valorem Tax for the year 1910 on all Taxable Property in the City of Carrollton on April 1st, 1910," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th. day of July, 1916 and on the 13th. day of July, 1916 duly published in the City of Carrollton, a tax for the year 1910 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1910, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X4" and "Y4" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City

of Carrollton on the 7th. day of June, 1911 and by an Ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1911 on all Taxable Property in the City of Carrollton, Ky. on April 1st, 1911," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th. day of July, 1916 and on the 13th day of July, 1916 duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1911 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1911, was duly levied. A duly attested copy of said resolution and said ordinance has been hereinbefore filed herewith marked "X5" and "Y5" respectively and same are now made a part hereof. Plaintiff states that by an Ordinance of the City of Carrollton entitled "An Ordinance in regard to Ad Valorem Tax" duly passed and adopted by the Board of Council of the City of Carrollton on June 5th, 1912 and duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1912 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1912, was duly levied. A duly attested copy of said ordinance has been hereinbefore filed herewith marked "X6" and same is now made a part hereof. Plaintiff states that by a resolution of the City of Carrollton duly passed and adopted by the Board of Council of the City of Carrollton on the 18th day of June, 1913, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1913 and adopted by the Board of Council of the City of Carrollton on July 7, 1916, and duly published in the Carrollton News July 13, 1916, a tax for the year 1913 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1913 for said City, was duly levied. A duly attested copy of the resolution and ordinance levying said tax has been heretofore filed herewith marked "X7" and "Y7" respectively and same are now made a part hereof. Plaintiff states that by a resolution of the City of Carrollton duly passed by the Board of Council of the City of Carrollton on the 10th. day of June, 1914, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1914 on all Taxable property in the City of Carrollton on April 1st, 1914," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th. day of July, 1916 and on the 13th day of July, 1916 duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1914 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1914 for said City, was duly levied. A duly attested copy of said resolution and said ordinance has been hereinbefore filed herewith marked "X8" and "Y9" respectively and same are now made a part hereof. Plaintiff

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states that by a resolution of the City of Carrollton duly passed and adopted by the Board of Council of the City of Carrollton on June 10th, 1915 and by an Ordinance of said City entitled "An Ordinance Levying an Ad Valorem Tax for the year 1915 on all Taxable Property in the City of Carrollton, Ky. on April 1st, 1915" duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916 and on the 13th. day of July, 1916 duly published in the Carrollton News, a weekly newspaper pub-
92 lished in the City of Carrollton, a tax for the year 1915 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1915, was duly levied. A duly attested copy of said resolution and said ordinance has been hereinbefore filed herewith marked "X10" and "Y10" respectively, and same are now made a part hereof.

Plaintiff states that by virtue of the aforesaid resolutions and ordinances of the City of Carrollton levying a tax for the years 1908, 1909, 1910, 1911, 1912, 1913, 1914 and 1915 and by virtue of the assessments made for each of said years as hereinbefore stated and by virtue of the ordinances of the City of Carrollton hereinbefore referred to, the defendant having the custody of said distilled spirits in its warehouses in the City of Carrollton during the times stated in said statements and by virtue of said statements of whiskey withdrawn from said warehouses hereinbefore referred to, which whiskey plaintiff says was so withdrawn, the defendant became liable and indebted to plaintiff and is now liable and indebted to plaintiff in the sum of $430.90 for taxes for the years 1908, 1909, 1910, 1911, 1912, 1913, 1914 and 1915 on said spirits and the further sum of $29.44 interest on each year's assessment until the first day of May, 1915, and the further sum of $34.47 a penalty of eight per cent on said delinquent taxes and interest at the rate of six per cent per annum on the sum of $460.34 from November 1st, 1915 until paid and the further sum of $86.18 a further penalty of twenty per cent.

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Paragraph XIV.

Plaintiff states that the defendant, Jett Bros. Distilling Co., the owner and proprietor of bonded warehouses in which said distilled spirits were stored situated in the City of Carrollton, did on the — day of September, 1915, make and transmit to the Auditor of Public Accounts of the State of Kentucky a statement subscribed and sworn to by J. F. Jett, Treasurer of Jett Bros. Distilling Co., showing the quantity and kind of spirits that had been withdrawn from said warehouses during the four months next before the first day of September, 1915, the years in which such spirits were assessed for County, City, Town and Taxing District taxation and the County and City in which said warehouses were situated in which said spirits were stored at the time of said assessments. A duly attested copy of said statement is filed herewith as part hereof marked "E4." Plaintiff states that by said statement the defendant reported to the Auditor

of Public Accounts that 64 packages of whiskey which had been in bond and stored in said warehouses since 1910 and 749 packages of whiskey which had been in bond and stored in said warehouses since 1911 and 159 packages of whiskey which had been in bond and stored in said warehouses since 1912 and 3 packages of whiskey which had been in bond and stored in said warehouses since 1913 had been removed and withdrawn from said warehouses during the four months next before the first day of September, 1915. Plaintiff states that said spirits had been stored in said warehouses in the City of Carrollton during the times stated in said statement
94 and each of said packages of whiskey was one barrel of whiskey. Plaintiff states that the defendant failed to make and transmit to the Clerk of the Carroll County Court said statement as required by law but in lieu thereof defendant made a statement showing the quantity and kind of spirits that had been removed and withdrawn from said warehouses during the four months next before the first day of September, 1915, which corresponded to the statement made to the Auditor of Public Accounts and which was addressed to J. E. Robertson, Sheriff.

Plaintiff states that said statement made in lieu of the one required by law to be made to the Clerk of the Carroll County Court was filed in the office of the Clerk of the Carroll County Court and a duly attested copy thereof is filed herewith as part hereof marked "E7."

Plaintiff states that all of said spirits reported withdrawn from said warehouses by defendant's said reports and statements were duly assessed for taxation for the City of Carrollton by the State Board of Valuation and Assessment for each of the years said spirits were stored in said warehouses at the value hereinbefore stated, to-wit: for 1908, $8.00 per barrel; for 1909 and 1910 $9.00 per barrel; for 1911 and 1912, $10.00 per barrel and for 1913, 1914, and 1915, $12.00 per barrel.

Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 1st day of July, 1908,, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the Year 1908 on all Taxable Property in the City of Carrollton April 1st, 1908," duly passed and adopted by the Board of Council of the City of
95 Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1908 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1908 for said City, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "Y1" and "Y2" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 2nd day of June, 1909, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the Year 1909 on all Taxable Property in the City of Carrollton, Ky., on April 1st, 1909," duly pa-

and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1909 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1909, was duly levied. A duly attested copy of said resolution and said ordinance has been hereinbefore filed herewith marked "X3" and "Y3" respectively and same are now made a part hereof.

96 Plaintiff states that by a resolution duly passed by the Board of Council of the City of Carrollton on June 1st, 1910, and by an ordinance of said City entitled "An Ordinance Levying an Ad Valorem Tax for the Year 1910 on all Taxable Property in the City of Carrollton on April 1st, 1910," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1910 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1910, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X4" and "Y4" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of June, 1911, and an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the Year 1911 on all Taxable Property in the City of Carrollton, Ky., April 1st, 1911," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1911 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year

97 1911, was duly levied. A duly attested copy of said resolution and said ordinance has been hereinbefore filed herewith marked "X5" and "Y5" respectively and same are now made a part hereof. Plaintiff states that by an ordinance of the City of Carrollton entitled "An Ordinance in Regard to Ad Valorem Tax," duly passed and adopted by the Board of Council of the City of Carrollton on June 5th, 1912, and duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1912 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1912, was duly levied. A duly attested copy of said resolution has been hereinbefore filed herewith marked "X6" and same is now made a part hereof. Plaintiff states that by a resolution on the City of Carroll-

ton duly passed and adopted by the Board of Council of the City
Carrollton on the 18th day of June, 1913, and by an ordinance of t
City of Carrollton entitled "An Ordinance Levying an Ad Valor
Tax for the Year 1913 on all Taxable Property in the City of Carr
ton on April 1st, 1913," duly passed and adopted by the Board
Council of the City of Carrollton on July 7, 1916, and duly publish
in the Carrollton News, July 13, 1916, a tax for the year 1913
seventy-five cents on each one hundred dollars' worth of taxa
property in the City of Carrollton as same appears from the ass
ments and valuations made for the year 1913 for said C
98 was duly levied. A duly attested copy of the resolution a
ordinance levying said tax has been heretofore filed herew
marked "X7" and "Y7" respectively and same are now made a p
hereof. Plaintiff states that by a resolution of the City of Carroll
duly passed by the Board of Council of the City of Carrollton on t
10th day of June, 1914, and by an ordinance of the City of Carr
ton entitled "An Ordinance Levying an Ad Valorem Tax for t
Year 1914 on all Taxable Property in the City of Carrollton
April 1st, 1914," duly passed and adopted by the Board of Coun
of the City of Carrollton on the 7th day of July, 1916, and on t
13th day of July, 1916, duly published in the Carrollton News,
weekly newspaper published in the City of Carrollton, a tax for t
year 1914 of seventy-five cents on each one hundred dollars' wor
of taxable property in the City of Carrollton as same appears fr
the assessments and valuations made for the year 1914 for said Ci
was duly levied. A duly attested copy of said resolution and s
ordinance has been hereinbefore filed herewith marked "X8" a
"Y8" respectively and same are now made a part hereof. Plaint
states that by a resolution of the City of Carrollton duly passed a
adopted by the Board of Council of Carrollton on June 10th, 191
and by an ordinance of said City entitled "An Ordinance Levyi
an Ad Valorem Tax for the Year 1915 on all Taxable Property
the City of Carrollton, Ky., on April 1st, 1915," duly passed a
adopted by the Board of Council of the City of Carrollton on t
7th day of July, 1916, and on the 13th day of July, 1916, duly pu
lished in the Carrollton News, a weekly newspaper published in t
City of Carrollton, a tax for the year 1915 of seventy-five cents
each one hundred dollars' worth of taxable property in the City
Carrollton as same appears from the assessments and valu
99 tions made for the year 1915 for said City, was duly levie
Duly attested copies of said resolution and said ordinan
have been hereinbefore filed herewirh marked "X10" and "Y1
respectively and same are now made a part hereof.

Plaintiff states that by virtue of the resolutions and ordinances
the City of Carrollton levying a tax for each of the years 1908, 190
1910, 1911, 1912, 1913, 1914 and 1915 and by virtue of the ass
ments made for each of said years as hereinbefore stated and b
virtue of the ordinances of the City of Carrollton hereinbefore r
ferred to and the defendant having the custody of said distill
spirits in its warehouses in the City of Carrollton during the tim
stated herein and by virtue of said statements of whiskey withdra

from said warehouses hereinbefore referred to, which whiskey plaintiff says was so withdrawn, the defendant became liable and indebted to plaintiff and is now liable and indebted to plaintiff in the sum of $359.95 for taxes on said spirits for the years 1908, 1909, 1910, 1911, 1912, 1913, 1914 and 1915 and the further sum of $27.23 interest on each year's assessment until the first day of September, 1915. Plaintiff states that said taxes and interest are long past due and no part thereof has been paid except the sum of $62.34 which was paid on September 10th, 1915, and plaintiff is entitled to recover of the defendant the sum of $324.84 with interest at the rate of six per cent per annum from the first day of November, 1915, until paid and the further sum of $64.96, a further penalty of twenty per cent on said delinquent taxes and the further sum of $26.18, a penalty of eight per cent on said delinquent taxes.

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Paragraph XV.

Plaintiff states that the defendant, Jett Bros. Distilling Co., the owner and proprietor of bonded warehouses in which distilled spirits were stored situated in the City of Carrollton, did on the 6 day of January, 1916, make and transmit to the Auditor of Public Accounts of the State of Kentucky a statement subscribed and sworn to by J. F. Jett, Treasurer of Jett Bros. Distilling Co., showing the quantity and kind of spirits that had been withdrawn from said warehouses during the four months next before the first day of January, 1916, the year in which such spirits were assessed for County, City, Town and taxing district taxation and the County and City in which said warehouses were situated in which said spirits were stored at the time of said assessments. A duly attested copy of said statement is filed herewith as part hereof marked "F2." Plaintiff states that by said statement the defendant reported to the Auditor of Public Accounts that 75 packages of whiskey which had been in bond and store- in said warehouses since 1909 and 87 packages of whiskey which had been in bond and stored in said warehouses since 1910 and 796 packages of whiskey which had been in bond and stored in said warehouses since 1911 and 491 packages of whiskey which had been in bond and stored in said warehouses since 1912 and 10 packages of whiskey which had been in bond and stored in said warehouses since 1913 and 5 packages of whiskey which had been in bond and stored in said warehouses since 1914 had been removed and withdrawn from said warehouses during the four months next before the first day of January, 1916. Plaintiff states that said spirits had been stored in said warehouses
101 in the City of Carrollton during the times stated in said statement and that each package contained one barrel of whiskey. Plaintiff states that the defendant failed to make and transmit to the Clerk of the Carroll County Court said statement showing the quantity and kind of spirits that had been withdrawn and removed from said warehouses during the four months next before the first day of January, 1916, which corresponded to the

statement made to the Auditor of Public Accounts and which was addressed to J. E. Robertson, Sheriff. Plaintiff states that said statement made in lieu of the one required to be made to the Clerk of the Carroll County Court was filed in the office of the Clerk of Carroll County Court and a duly attested copy of said statement is filed herewith as part hereof marked "F4."

Plaintiff states that all of said spirits reported withdrawn from said warehouses by defendant's said statements were duly assessed for taxation for the City of Carrollton by the State Board of Valuation and Assessment for each of the years said spirits were stored in said warehouses at the value hereinbefore stated, to-wit: for 1909 and 1910, $9.00 per barrel; for 1911 and 1912, $10.00 per barrel, and for 1913, 1914, 1915 and 1916, $12.00 per barrel.

Plaintiff states that by a resolution duly passed by the Board of Council of the City of Carrollton on the 2nd day of June, 1909, and by an ordinance of the City of Carrollton entitled "An Ordinance
Levying an Ad Valorem Tax for the year 1909 on all Tax-
102 able Property in the City of Carrollton, Ky., on April 1st,
1909," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1909 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1909, was duly levied. A duly attested copy of said resolution and said ordinance has been hereinbefore filed herewith marked "X3" and "Y3" respectively and same are now made a part hereof. Plaintiff states that by a resolution of the City Council of the City of Carrollton duly passed and adopted on the 1st day of June, 1910, by the Board of Council of the City of Carrollton and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1910 on all Taxable Property in the City of Carrollton, Ky., on April 1st, 1910," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1910 of seventy-five cents on each one hundred dollars' worth of taxable property as same appears from the assessments and valuations made for the year 1910 for said City, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith
marked "X4" and "Y4" respectively and same are now made
103 a part hereof. Plaintiff states that by a resolution of the
City of Carrollton duly passed and adopted by the Board of Council of said City on the 7th day of June, 1911, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1911 on all Taxable Property in the City of Carrollton, Ky., on April 1st, 1911," duly passed and adopted by the Board of Council of the City of Carrollton on the

7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1911 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1911 for said City was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X5" and "Y5" respectively and same are now made a part hereof. Plaintiff states that by an ordinance of the City of Carrollton entitled "An Ordinance in regard to Ad Valorem Tax" duly passed and adopted by the Board of Council of the City of Carrollton on the 5th day of June, 1912, and duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1912 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1912 was duly levied. A duly attested copy of said ordinance has been hereinbefore filed herewith marked "X6" and same is now made a part hereof. Plaintiff states that by a resolution of the City of
104 Carrollton duly passed and adopted by the Board of Council of the City of Carrollton on the 18th day of June, 1913, and by an ordinance of said City entitled "An Ordinance Levying an Ad Valorem Tax for the year 1913 on all Taxable Property in the City of Carrollton, Ky., April 1st, 1913," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1913 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1913 was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith as part hereof marked "X7" and "Y7" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton on the 10th day of June, 1914, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1914 on all Taxable Property in the City of Carrollton, Ky., on April 1st, 1914," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper, a tax for the year 1914 of seventy-five cents on each one hundred dollars' worth of taxable
5 property in the City of Carrollton, Ky., as same appears from the assessments and valuations made for said City for the year 1914, was duly levied. A duly attested copy of said resolution and said ordinance has been hereinbefore filed herewith marked "X8" and "Y9" respectively and same are now made a part hereof. Plaintiff states that by a resolution of the City of

Carrollton duly passed by the Board of Council of the City of Carrollton on the 10th day of June, 1915, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1915 on all Taxable Property in the City of Carrollton, Ky., on April 1st, 1915," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1915 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1915 was duly levied. Duly attested copies of said resolution and said ordinance have beeen hereinbefore filed herewith marked "X10" and "Y10" respectively and same are now made a part hereof.

Plaintiff states that by an Ordinance of the City of Carrollton entitled "An Ordinance Levying a Poll Tax on all Male Inhabitants over and above twenty-one years of age residing in the City of Carrollton, Ky., on the first day of April, 1916, and an Ad Valorem Tax on all taxable property in the City of Carrollton, Ky., on April 1st, 1916, and providing the purposes for which said taxes shall be applied when collected," duly passed and adopted by the
106 Board of Council of the City of Carrollton on the 13th day of June, 1916, and on the — day of June, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1916 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1916, was duly levied. A duly attested copy of said ordinance is filed herewith as part hereof marked "X11."

Plaintiff states that by virtue of the resolutions and ordinances of the City of Carrollton levying a tax for the years 1909, 1910, 1911, 1912, 1913, 1914 and 1915 and 1916 by virtue of the assessments made for said City for each of said years hereinbefore referred to and by virtue of the ordinances of the City of Carrollton hereinbefore referred to and the defendant having the custody of said distilled spirits in its warehouses in the City of Carrollton during the times herein stated and by virtue of said statements of whiskey withdrawn from said warehouses hereinbefore referred to, which whiskey plaintiff says was so withdrawn, the defendant became indebted and liable to plaintiff and is now liable and indebted to plaintiff in the sum of $613.81 for taxes for the years 1909, 1910, 1911, 1912, 1913, 1914, 1915 and 1916 on said distilled spirits and the further sum of $43.29 interest on each year's assessment until the first day of January, 1916.

107 Plaintiff states that said taxes and interest are long past due and no part thereof has been paid except the sum of $87.84 which was paid on the 10 day of January, 1916, and that plaintiff is entitled to recover of the defendant the sum of $569.2[illegible] taxes for the years 1909, 1910, 1911, 1912, 1913, 1914, 1915 and

1916 and the further sum of $45.54 eight per cent penalty on said unpaid taxes and the further sum of $113.85 a further penalty of twenty per cent on said delinquent taxes.

Paragraph XVI.

Plaintiff states that the defendant, Jett Bros. Distilling Co., the owner and proprietor of bonded warehouses in which distilled spirits were stored situated in the City of Carrollton, did on the 2 day of May, 1916, make and transmit to the Auditor of Public Accounts of the State of Kentucky a statement subscribed and sworn to by J. F. Jett, Treasurer of Jett Bros. Distilling Co., showing the quantity and kind of spirits that had been withdrawn from said warehouses during the four months next before the first day of May, 1916, the years in which such spirits were assessed for County, City, Town and taxing district taxation and the County and City in which said warehouses were situated in which said spirits were stored at the time of said assessments. A duly attested copy of said statement is filed herewith as part hereof marked "F3." Plaintiff states that by said statement the defendant reported to the Auditor of Public Accounts that 30 packages of whiskey which had been in bond and stored in said warehouses since 1909 and 88 packages of whiskey which had been in bond and stored in said warehouses since 1910 and 369 packages of whiskey which had been in bond and stored in said warehouses since 1911 and 906 packages of whiskey which had been in bond and stored in said warehouses since 1912 and 49 packages of whiskey which had been in bond and stored in said warehouses since 1913 and had been removed and withdrawn from said warehouses during the four months next before the first day of May, 1916. Plaintiff states that said spirits had been stored in said warehouses in the City of Carrollton during the times stated in said statement and that each package contained one barrel of whiskey. *Plaintiff states that said spirits had been stored in said warehouses in the City of Carrollton during the time stated in said statement and that each package contained one barrel of whiskey.* Plaintiff states that the defendant failed to make and transmit to the Clerk of the Carroll County Court said statement as required by law but in lieu thereof defendant made a statement showing the quantity and kind of spirits that had been withdrawn and removed from said warehouses during the four months next before the first day of May, 1916 which corresponded to the statement made to the Auditor of Public Accounts and which was addressed to J. E. Robertson, Sheriff. Plaintiff states that said statement made in lieu of the one required to be made to the Clerk of the Carroll County Court was filed in the office of the Clerk of the Carroll County Court and a duly attested copy of said statement is filed herewith as part hereof marked "F5."

108

Plaintiff states that all of said spirits reported withdrawn from said warehouses by defendant's said statements were duly assessed for taxation for the City of Carrollton by the State Board of

109 Valuation and Assessment for each of the years said spirits were stored in said warehouses at the value hereinbefore stated to-wit: for 1909 and 1910 $9.00 per barrel; for 1911 and 1912 $10.00 per barrel and for 1913, 1914, 1915 and 1916 $12.00 per barrel.

Plaintiff states that by a resolution duly passed by the Board of Council of the City of Carrollton on the 2nd day of June, 1909 and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Advalorem Tax for the year 1909 on all Taxable Property in the City of Carrollton, Ky. on April 1st, 1909, duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916 duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1909 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1909, was duly levied. A duly attested copy of said resolution and said ordinance has been hereinbefore filed herewith marked "X3" and "Y3" respectively and same are now made a part hereof. Plaintiff states that by a resolution of the City Council of the City of Carrollton duly passed and adopted on the 1st day of June, 1910 by the Board of Council of the City of Carrollton and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Advalorem Tax for the year 1910 on all Taxable Property in the City of Carrollton, Ky. on April 1st, 1910," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916, and on the 13th day of July, 1916 duly published in the Carrollton News a weekly newspaper published in the City of Carrollton, a tax for the year
110 1910 of seventy-five cents on each one hundred dollars' worth of taxable property as same appears from the assessments and valuations made for the year 1910 for said City, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X4" and "Y4" respectively and same are now made a part hereof. Plaintiff states that by a resolution of the City of Carrollton duly passed and adopted by the Board of Council of said City on the 7th day of June, 1911, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1911 on all Taxable Property in the City of Carrollton, Ky. on April 1st 1911, passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916 and on the 13th day of July, 1916 duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1911 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for the year 1911 for said City, was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X5" and "Y5" respectively and same are now made a part hereof. Plaintiff states that by an ordinance of the City of Carrollton entitled "An Ordinance in regard to Ad

Valorem Tax," duly passed and adopted by the Board of Council of the City of Carrollton on the 5th day of June 1912 and duly
111 published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1912 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1912, was duly levied. A duly attested copy of said ordinance has been hereinbefore filed herewith marked "X6" and same is now made a part hereof. Plaintiff states that by a resolution of the City of Carrollton duly passed and adopted by the Board of Council of the City of Carrollton on the 18th day of June, 1913 and by an ordinance of said City entitled "An Ordinance Levying an Ad Valorem Tax for the year 1913 on all Taxable Property in the City of Carrollton, Ky. April 1st, 1913," duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916 and on the 13th day of July, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1913 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1913 was duly levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith as part hereof marked "X7" and "Y7" respectively and same are now made a part
hereof. Plaintiff states that by a resolution duly passed and
112 adopted by the Board of Council of the City of Carrollton on the 10th day of June, 1914, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1914 on all Taxable Property in the City of Carrollton, Ky. on April 1st, 1914" duly passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916 and on the 13th day of July, 1916 duly published in the Carrollton News, a weekly newspaper, a tax for the year 1914 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton, Ky. as same appears from the assessments and valuations made for said City for the year 1914, was duly levied. A duly attested copy of said resolution and said ordinance has been hereinbefore filed herewith marked "X8" and "Y9" respectively and same are now made a part hereof. Plaintiff states that by a resolution of the City of Carrollton duly passed by the Board of Council of the City of Carrollton on the 10th day of June, 1915 and by an ordinance of the City of Carrollton, entitled "An Ordinance Levying an Ad Valorem Tax for the year 1915 on all Taxable property in the City of Carrollton, Ky. on April 1st, 1915" duly passed and
adopted by the Board of Council of the City of Carrollton on
13 the 7th day of July, 1916 and on the 13th day of July, 1916 duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1915 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuation made for said City for the year 1915 was duly

levied. Duly attested copies of said resolution and said ordinance have been hereinbefore filed herewith marked "X10" and "Y10" respectively and same are now made a part hereof.

Plaintiff states that by an Ordinance of the City of Carrollton entitled "An Ordinance Levying a Poll Tax on all Male Inhabitants over and above twenty-one years of age residing in the City of Carrollton, Ky., on the first day of April, 1916, and an Ad Valorem Tax on all taxable Property in the City of Carrollton, Ky., on April 1st, 1916, and providing the purposes for which said taxes shall be applied when collected," duly passed and adopted by the Board of Council of the City of Carrollton on the 13th day of June, 1916, and on the — day of June, 1916, duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, a tax for the year 1916 of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1916, was duly *viewed* levied. A duly attested copy of said ordi-
114 nance has heretofore been filed herewith marked "X11," and same is now made a part hereof.

Plaintiff states that by virtue of the resolutions and ordinances of the City of Carrollton levying a tax for the years 1909, 1910, 1911, 1912, 1913, 1914, 1915 and 1916 and by virtue of the assessments made for said City for each of said years hereinbefore referred to and by virtue of the ordinances of the City of Carrollton hereinbefore referred to and the defendant having the custody of said distilled spirits in its warehouses in the City of Carrollton during the times herein stated and by virtue of said statements of whiskey withdrawn from said warehouses hereinbefore referred to, which whiskey plaintiff says was so withdrawn, the defendant became indebted and liable to plaintiff in the sum of $562.11 for taxes for the years 1909, 1910, 1911, 1912, 1913, 1914, 1915 and 1916 on said distilled spirits and the further sum of $43.69 interest on each year's assessment until the first day of May, 1916.

Plaintiff states that said taxes and interest are long past due and no part thereof has been paid except the sum of $86.52 which was paid on the 6 day of May, 1916, and that plaintiff is entitled to recover of the defendant the sum of $519.28 taxes for the years 1909, 1910, 1911, 1912, 1913, 1914, 1915 and 1916 and the further sum of $41.54 eight per cent penalty on said unpaid taxes and the further sum of $103.85 a further penalty of twenty per cent on said delinquent taxes.

115 Wherefore, plaintiff prays for judgment against the Defendant, Jett Bros. Distilling Co., for the following sums, to-wit: $289.61 with legal interest thereon from November 1st, 1911, until paid and the further sum of $21.28 and the further sum of $53.21 and the further sum of $403.65 with legal interest thereon from November 1st, 1912 and the further sum of $30.03 and the further sum of $75.07 and the further sum of $308.49 with legal interest thereon from November 1st, 1912, until paid and the further sum of $22.90 and the further sum of $57.28 and the further sum of $235.81 with legal interest thereon from November 1st, 1912, until

paid and the further sum of $17.83 and the further sum of $44.58 and the further sum of $270.07 with legal interest thereon from November 1st, 1913 until paid and the further sum of $20.09 and the further sum of $50.22 and the further sum of $190.99 with legal interest thereon from November 1st, 1913, until paid and the further sum of $14.11 and the further sum of $35.28 and the further sum of $331.82 with legal interest thereon from November 1st, 1913 until paid and the further sum of $24.48 and the further sum of $61.22 and the further sum of $408.08 with legal interest thereon from November 1st, 1914 until paid and the further sum of $30.84 and the further sum of $77.12 and the further sum of $330.52 with legal interest thereon from November 1st, 1914, until paid and the further sum of $24.48 and the further sum of $61.20 and the further sum of $313.30 with legal interest thereon from November
116 1st, 1914 until paid and the further sum of $23.31 and the further sum of $58.30 and the further sum of $485.77 with legal interest thereon from November 1st, 1915 until paid and the further sum of $36.76 and the further sum of $91.91 and the further sum of $460.34 with legal interest thereon from November 1st, 1915, until paid and the further sum of $34.47 and the further sum of $86.18 and the further sum of $324.84 with legal interest thereon from November 1st, 1915 until paid and the further sum of $26.18 and the further sum of $64.96 and the further sum of $569.26 and the further sum of $45.54 and the further sum of $113.85 and the further sum of $519.28 and the further sum of $41.52 and the further sum of $103.85 and its costs herein expended and all proper relief.

J. A. DONALDSON & SONS,
Attorneys for Plaintiff.

Summons.

On the same day, to-wit, 15th day of August, 1916, summons was issued, herein, to Carroll County, and the same was executed upon the defendant in due time by the Sheriff of Carroll county and was
117 by him returned by him and the same remains now on file in this office.

Order.

Order in Court, August 30, 1916.

Mo. to Par. Pet. Ct. Took Time.

Came the defendant by Winslow & Howe, its attorneys, and filed written motion and grounds to require the plaintiff to reform and properly paragraph its petition, herein, to which plaintiff objected, and the Court, not being advised, took time.

Motion to Require Plaintiff to Paragraph Petition.

The Motion to rwquire plaintiff to reform and paragraph petition, referred to in the foregoing order, is in words and figures, as follows:

Carroll Circuit Court.

CITY OF CARROLLTON, Plaintiff,
vs.
JETT BROS. DISTILLING CO., Defendant.

Motion to Require Plaintiff to Reform and Paragraph Petition.

The defendant moves the court to require the plaintiff to reform and properly paragraph its petition herein stating each of its alleged causes of action in separate numbered paragraphs and for grounds says:

1. That to constitute a lawful cause of action in any paragraph of the petition that paragraph must show a lawful assessment and a lawful levy and time of the maturity of the demand and without the allegations being so made in reference to each cause of action the defendant cannot properly, and should not be required to
118 plead to the petition. These various causes of action should be stated in distinct separate paragraphs just as if each were upon a promissory note.

2. The allegations near the close of page 1 of the petition in regard to the ordinance fixing a penalty of 20% on delinquent taxes should at least be placed in a separate numbered paragraph if not in fact made a part of each paragraph of the petition.

WINSLOWS & HOWE,
Attorneys for Defendant.

Order.

Order in Court August 31, 1916.

Mo to Par. Overruled.—Dft. Ex:

The written motion of defendant to require plaintiff to reform and properly paragraph its petition herein, coming on for hearing and the court, being advised, said motion is overruled, to which the defendant excepts.

Order—Gnl. Dmr. Ct. Took Time.

And on the same day, to-wit, August 31, 1916, the following order was made:

Came the defendant and filed a general demurrer to the plaintiff's petition and to each paragraph thereon, and to certain parts, thereto,

specified in the written demurrer, to which the plaintiff objected and the Court took time.

General Demurrer.

The General Demurrer referred to in the foregoing order is in words and figures, as follows, to-wit:

Carroll Circuit Court.

CITY OF CARROLLTON, Plaintiff,

vs.

JETT BROS. DISTG. CO., Defendant.

General Demurrer to Petition.

119 The defendant, Jett Bros. Distilling Co., by Winslow & Howe, its attorn-ys, demur generally to the plaintiff's petition herein and for grounds says that no paragraph of the petition nor the petition as a whole states grounds sufficient to constitute a cause of action against the defendant.

It expressly demurs to so much of the petition as seeks to recover a penalty of 20% under section 16 of an ordinance of the City of Carrollton in addition to other penalties prescribed by statute and for grounds says that if the plaintiff is entitled to proceed in this action under the provisions of the general law relating to the assessment and collection of taxes on distilled liquors then it is limited to the penalties prescribed under that statute and is not entitled to add thereto the penalty prescribed by ordinance for the collection of taxes on other property.

It expressly demurs to so much of the petition as seeks to compound the interest in any wise.

It expressly demurs to so much of the petition as attempts to charge penalty upon any accrued interest.

WINSLOW & HOWE,
Attorneys for Defendant.

120 *Order—Mo. Dft. to Make Pet., &c.*

And at the same term on September 3, 1916, the following order was made:

Came the defendant during the pendency of the demurrer to the petition and filed a written motion to require the plaintiff to make the petition more definite and specific in certain particulars as set out in said motion, to which the plaintiff objected and the Court took time.

Motion to Make Petition More Specific.

The written motion referred to in the foregoing order is in words and figures as follows, to-wit:

Carroll Circuit Court.

CITY OF CARROLLTON, Plaintiff,

v.

JETT BROS. DISTILLING CO., Defendant.

Motion to Require Plaintiff to Make Petition More Definite and Specific.

The defendant moves the Court to require the plaintiff to make its petition more definite and specific in particulars as follows:

1. To state therein definitely and specifically the total number of barrels of whiskey assessed each year together with the date as of which it was assessed, and the total value thereof.

121 2. To state definitely and specifically the amount of tax which became due on the filing of the withdrawal report in September, 1911, upon the assessment for each of the years 1907, 1908, 1909, 1910, and 1911, together with the date from which interest is charged on each of said sums instead of giving the amount of said tax and interest in a lump sum for said five years.

3. To likewise state definitely and specifically the amount of tax which became due on the filing of each of the withdrawal reports ste out in the petition upon the assessment for each year, together with the particular date from which interest is charged on each of them instead of giving the amount of said tax and of the interest in a lump sum for each period of five years.

WINSLOW & HOWE,
Attorneys for Defendant.

Order.

Order in Court, August Term, Fifth Day of September, 1916.

Mo. to Make Pet. More Specific Overruled.—Dft. Ex.

The written motion of the defendant to require the plaintiff to make more definite and specific its petition in the particulars as set out in the written motion coming on for hearing upon the objections of plaintiff and the Court being advised, said motion is overruled, to which the defendant excepts.

122 *Order.*

Order in Court, August Term, Fifth Day of September, 1916.

Demurrer to Pet. Sustained.

The written demurrer of the defendant, herein, to the plaintiff's petition, coming on for hearing, upon the objection of plaintiff, and the court being advised the demurrer is sustained to so much of the petition as seeks to recover a penalty of 20% under section 16 of an ordinance of the City of Carrollton referred to in said petition, or to recover any penalty other than the 8% penalty prescribed in section 4112 of Kentucky statutes, to which ruling of the Court, defendant excepts; the demurrer is also sustained as to so much of the petition as attempts to in anywise compound the interest and it is ordered that no interest in excess of six per cent per annum shall be allowed in any recovery which may be had herein, to which ruling of the Court, plaintiff excepts. As to all other matters said demurrer is overruled, to which ruling the defendant excepts.

Order—Time to Answer.

And, on the same day, to-wit, September 5, 1916, this order was made:

By agreement of parties the defendant is given until Rule Day in November to file its answer, herein.

And afterwards on Rule Day in the Clerk's office of this Court, on the 6th day of November, 1916, this order was made:

123 *Order—Mo. to File Corrected Copy of Withdrawal Reports.*

Came the defendant and filed a written motion to require the plaintiff to file corrected, certified copies of the withdrawal reports alleged to have been made by them to compare the whiskey referred to in the petition.

Motion.

The Motion referred to in the foregoing order is in words and figures *and* follows:

Carroll Circuit Court.

City of Carrollton, Plaintiff,

v.

Jett Bros. Distilling Co., Defendant.

The defendant, Jett Bros. Distilling Co., moves the Court to require the plaintiff to file correct copies of the withdrawal reports

alleged to have been made by the defendants to the Auditor Public Accounts and for grounds says:

That the exhibits as filed showing that if they are correctly ma that a considerable portion of the whiskey referred to therein certified to have been reported as withdrawn from bond before was actually placed in bond and said certified copies are upon the face so incorrect as to make it impossible for this defendant properly verify the same and to plead thereto.

WINSLOW & HOWE,
Attorneys for Defendant.

124 *Order.*

Order in Court, November Term, 2nd day of December, 1916.

Mo. to File Corrected Copies Overruled.—Dft. Ex.

The motion of defendant, herein to require the plaintiff to f corrected copies of the exhibits filed with plaintiff's petition comi on for hearing on the objections of plaintiff, it is ordered by the Cou that said motion be, and same is, overruled, to which defenda excepts.

Order.

Order in Court, Same Term. Same day.

Answer Filed.

Came the defendant and filed its answer herein.

Agreement not to Copy Answ.

By agreement this Answer need not be copied in transcript but i the place where it would come copy the "Schedule and Agreement in regard thereto.

Paragraph 3 referred to in the "Schedule and Agreement" rea as follows:

It is further agreed that the answer herein consisting of 84 page contains (*a*) a traverse of all the material allegations of the petitio (said denials being embraced in the first sixteen paragraphs and co ering 74 pages thereof); (*b*) that the remaining paragraphs of sai answer, to-wit, Nos. 7 to 22 were withdrawn and other allegation made in lieu thereof in the amended answer.

Hencer, in order to avoid the unnecessary cost and delay in copy ing same, it is agreed that the original answer need not be copie in the transcript, and that the defense as made was and is a

125 traverse of the allegations of the petition as amended, togethe with the affirmative defenses set out in the amended answer, and may be so treated in the Court of Appeals (and for the informa tion and convenience of the Court of Appeals the Clerk of the Carrol

Circuit Court shall copy this agreement at the place in the transcript where the answer would otherwise appear.)

Order.

Order in Court, November Term, 4th day of December, 1916.

Demurrer to Ans. Overruled.—Plff. Ex.

Came the plaintiff, by attorneys, and demurred to defendant's answer as a whole, and the Court overruled said demurrer, to which the plaintiff excepts.

Demurrer to Answer.

The Demurrer referred to in the foregoing order is in words as follows:

Carroll Circuit Court.

CITY OF CARROLLTON, Plaintiff,

vs.

JETT BROS. DISTILLING CO., Defendant.

Demurrer.

1st. The plaintiff demurs to the defendant's answer because it does not present or set forth a defense to plaintiff's cause of action set forth in its petition.

2nd. The plaintiff demurs to each paragraph of defendant's answer because neither of said paragraphs present or contain a defense to plaintiff's causes of action set forth in its petition or to the cause of action set forth in either paragraph of its petition.

3rd. Plaintiff demurs to the 17th paragraph of defendant's answer because same is not applicable, it is irrelevant and it does not state facts sufficient to constitute a defense to plaintiff's cause of
128 action and it is no defense to plaintiff's cause of action set forth in its petition.

4th. Plaintiff demurs to the 17, 18, 19, 20, 21 and 22nd paragraphs of defendant's answer for the reasons set forth in its demurrer to the 17th paragraph of said answer.

J. A. DONALDSON & SONS,
Attorneys for Plaintiff.

Order.

Order in Court, November Term, 4th day of December, 1916.

Passing on Demurrer to Answer.

Came Plaintiff, by its attorneys, and on its motion plaintiff's written demurrer to each paragraph of the answer filed herein, is now

filed, herein, and the Court overruled plaintiff's demurrer to the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, and 21st paragraphs of defendant's answer, to which ruling of the Court plaintiff excepts, and the Court sustains plaintiff's demurrer to the 17th, 18th, 19th, 20th, and 22nd paragraphs of defendant's Answer, and leave is given defendant to amend said paragraph, which ruling of the Court the defendant excepts.

Order.

Order in Court, November Term, 4th day of December, 1916.

Motion to Strike from Answer.—Motion Sustained.—Dft. Excepts.

Came plaintiff, by attorneys, and filed its written motion to strike the following words out of defendant's answer as they appear in the 12th, 13th, 14th, 15th lines of the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, and 16th paragraphs of said defendant's answer, to-wit: "And says that under the charter governing the City of Carrollton said City could not assess any property except as of date April 1st in each year and could only levy and did only levy a tax on the assessment made as of April 1st as of each year" and the Court being sufficiently advised, sustained said motion and said words in each of said paragraphs of said answer are now stricken out of each of said paragraphs of said answer, to
127 which defendant excepts.

Motion to Strike Out.

The Motion to strike out referred to, is as follows:

Carroll Circuit Court.

CITY OF CARROLLTON, Plaintiff,

vs.

JETT BROS. DISTILLING CO., Defendant.

Motion to Strike.

The plaintiff moves the Court to strike out of defendant's answer the following words which are in the 12, 13, 14, and 15 lines of the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, and 16th paragraphs of said answer to-wit: "and says that under the charter governing the City of Carrollton said City could not assess any property except as of date April 1st in each year and could only levy and did only levy a tax on the assessment made as of April 1st of each year."

J. A. DONALDSON & SONS,
Attorneys for Plaintiff.

Order.

Order in Court, November Term, 4th day of December, 1916.

Amended Answer Filed.

Came Defendant and filed Amended Answer, herein.

Amended Answer.

The Amended Answer, referred to in the foregoing order, is in rds and figures as follows, to-wit:

Carroll Circuit Court.

CITY OF CARROLLTON, Plaintiff,

vs.

JETT BROS. DISTILLING CO., Defendant.

The defendant, with leave of Court amends its answer herein and n order to avoid confusion) withdraws all the affirmative allega- ns made in paragraphs XVII to XXII thereof inclusive (they being all the affirmative allegations of said answer) and in lieu thereof substitutes for its affirmative defenses the follow- ing:

Paragraph XVII.

For further answer herein this defendant says:

That in pursuance of the provisions of the charter of cities of the urth class, to-wit, sections 3533 and 3535 of Kentucky Statutes as the duty of the duly appointed assessor of said city on or before first Monday in May of each of the years set out in plaintiff's tion to take a list of all the taxable property in said city and rn the same to the Board of Council of said city, including all every kind of personal property in the city, whether belonging esidents or non-residents, that was "liable for state taxation" to value the same at its fair cash value, and "all of said property ble on its value" in said city was required by said section 3535 e valued as of the "first day of April in each year," and as of no r date.

hat under the provision of the charter of cities of the Fourth , to-wit, sections 3537 and 3539 of Kentucky Statutes, every on (including this defendant) owning or holding taxable prop- in his own right, or as fiduciary, or guardian or agent was re- ed in each of said years to return to the assessor, or to his assist- when called upon a true list of all such property, real or per- l, together with the value of the personalty and amounts of in-

vestments, "and all other property assessed by the state for taxatio
and make oath thereto before said assessor.

That under the provisions of the charter of cities of the Four
class, to-wit, section 3540 of Kentucky Statutes, the defendant wou
have been liable to be punished as for contempt if it had failed
give in all or any of its property "subject to state taxatio
120 to said assessor.

That in pursuance of the aforesaid provision of plaintif
charter the assessor of said city did on or before the first Monday
May in each of the years, 1907, 1908, 1909, 1910, 1911, 1912, 191
and 1914 apply to this defendant to list with him for taxation as
date April 1st, in each of said years, all of its property which w
"subject to State Taxation," "and taxable upon its value," and whi
in fact included bonded whiskey, and that in compliance with s
request and in compliance with the provisions of plaintiff's chart
hereinbefore set out this defendant did list with said assessor f
city taxation its bonded whickey (which whiskey was "taxable
its value" and was "subject to state taxation") at valuations for ea
of said years as follows, to-wit:

As of date April 1st, 1907, for year 1907							$22,160.0
As of date April 1st, 1908, for year 1908							22,160.0
As of date April 1st, 1909,	"	"	1909	"	"	1909	33,448.0
As of date "	"	1910,	"	"	1910		30,000.0
As of date "	"	1911,	"	"	1911		40,000.0
As of date "	"	1912,	"	"	1912		40,000.0
As of date "	"	1913,	"	"	1913		40,000.0
As of date "	"	1914,	"	"	1914		42,000.0

That said assessments were returned to the Board of Council
the Assessor and thereafter by said Board, within the time requir
by the charter of said city, referred to the Board of Supervisors
said city for equalization and the same were passed upon by s
Board of Supervisors and by said Board of Supervisors returned
said Board of Council.

That thereafter, to-wit, on or about the first day of July in ea
of said years referred to in plaintiff's petition and in pursuance
the city charter, to-wit, section 3536 of Kentucky Statutes, the Boa
of Council of said city, did levy an ad valorem tax of seventy-fi
cents "on each one hundred dollars' worth of taxable property in t
city of Carrollton, as the same appears from the assessment a
valuation as of date April 1st in each of said years by th
130 assessor of said city and equalized by the Board of Equali
tion of the city," and upon no other property, each of wh
levies is fully set out as Exhibits with plaintiff's petition mark
"X1," "X2," "X3," "X4," "X5," "X6," "X7," "X8," "X9," a
that said levies included the whiskey referred to in plaintiff's pe
tion and which plaintiff is now seeking to have taxed again.

That said assessment rolls were thereafter in each of said ye
placed in the hands of the authorized tax collector of said city, to-w
the city treasurer, with authority, and directions to collect the

thereon when the same should become due in pursuance of the char-
er of said city, to-wit, on July 1st of each year, and in pursuance
hereof this defendant did pay to the Treasurer of city of Carrollton,
s taxes on the aforesaid whiskey certain sums (being the full amount
demanded by said city) on certain dates and for the years specified
s follows, to-wit:

Oct. 1907 on the assessment of date Apr.	1/07.....	$166.20
Oct. 1908 " " " " " "	1/08.....	166.20
Oct. 1909 " " " " " "	1/09.....	250.86
Oct. 1910 " " " " " "	1/10.....	225.00
Oct. 1911 " " " " " "	1/11.....	300.00
Oct. 1912 " " " " " "	1/12.....	300.00
Oct. 1913 " " " " " "	1/13.....	300.00
Oct. 1914 " " " " " "	1/14.....	315.00

That said sums were paid by this defendant for two reasons: first, ecause they were justly due to the city, and second, because the city penly posted and published notices in the newspapers in Carrollton n each of said years that unless the same should be paid on or before Nov. 1st in each of said years all delinquents (which included this efendant) would be required to pay a penalty of at least twenty per centum thereon, and this defendant would have been required o pay said penalty on said sums if it had failed to pay said sums on r before November 1st in each year.

That in the performance of each and all of said acts both
31 by the plaintiff and defendant, each of the parties to this action was acting directly and specifically in conformity with he express provisions of the charter enacted by the Legislature of he State of Kentucky for governing cities of the Fourth class (to hich class the plaintiff city belongs).

That the provisions of sections 4105 to 4114 of the Kentucky Stat-es under which plaintiff bases its claim in its petition were enacted y the Legislature on Nov. 11th, 1892, and that the Act containing he powers and duties of cities of the Fourth class and known as he "charter of cities of the Fourth class" was thereafter, to-wit, on une 28, 1893, enacted by the Legislature, and to whatever extent here may be a conflict, if any, between the two acts the later one ust control.

That said Act of June 28, 1893, provides a complete system of axation for cities of the Fourth class and contains no exception or eservation of any kind whatever; on the contrary it fixes one day nd only one day in the year, to wit April 1st, in each year, as the aly date as of which cities of the Fourth class may assess any prop-rty for taxation which is "liable for State taxation" or which is "tax-ble upon its value," and upon which they are authorized to col-ct any tax.

That plaintiff having thus assessed and equalized said property and vied and collected the full amount of the taxes thereon in pursuance f the specific and expressed provisions of its charter, and the full mount thereof having been paid by plaintiff as herein set out the

claim of plaintiff is fully paid and satisfied and it has no right to maintain this action for the recovery of any of the amounts claimed in its petition.

Paragraph XVIII.

For further answer herein the defendant makes all the allegations of paragraph XVII hereof a part of this paragraph XVIII as fully as if copied herein and further states;

That at no time prior to July 7th., 1916, did the plaintiff
132 attempt to levy or collect any tax under or by virtue of the alleged assessments made by the State Board of Valuation and assessment upon the property as of date Sept. 1st, of each year as alleged in the petition and that although the plaintiff had caused said property to be assessed and valued and the tax thereon to be levied and collected on the property described in the petition in direct conformity to its charter as of date April 1st. in each year as fully set out in said paragraph XVII (which tax was assessed, collected and paid upon the same rate, valuation and basis as fixed for the property of the other taxpayers of the city) and well knowing that it had not theretofore for any year adopted or approved the assessment as made by said State Board in any year, and that plaintiff had never at any time attempted to levy or collect any tax for any of said years on the alleged assessments made as of date September 1st, in each year by said State Board, yet on or about the 7th day of July, 1916 the plaintiff by and through its Board of Council undertook to lay a foundation for this action by attempting to make levies on said property on said date on the alleged assessments by the said State Board for each of the years from 1907 to 1916 inclusive by passing or attempting to pass certain alleged ordinances of date July 7, 1916, and having the same passed, entered and published "nunc pro tunc," as if made in the various years for which the taxes are herein sought to be collected. Copies of said alleged levies are filed with plaintiff's petition and are referred to and made a part hereof.

That if said property at the time said alleged levies were made had been in the custody of the defendant or in its warehouse the plaintiff and this defendant would have been entitled to a lien on said property for such amount of taxes, interest and penalties, if any, as
133 would have been due to the plaintiff by reason of said alleged assessments and levies, and this defendant could have thereby protected itself, but as shown by the plaintiff's petition all of the whiskey for the tax on which the plaintiff sues in this action had been removed from said warehouse and custody of defendant on specific dates alleged by plaintiff showing that the same was removed on dates varying from four months to ten years prior to the making of said alleged levies of the tax, and by reason of the aforesaid acts of plaintiff, the defendant was deprived of any lien on said whiskey for the tax sued for herein.

Defendant says that the plaintiff having thus failed to create or preserve its lien (if any it had) on said property by reason of its failure to levy said tax until long after said property had been re-

moved from defendant's custody as set out herein and the defendant by reason of said acts of plaintiff not being able to enforce such lien as it might have had, the said plaintiff is now barred by its own laches and negligence in failing to make said levy at a proper time from attempting to collect said taxes or interest or penalties from this defendant, and especially when the plaintiff, during each of said years, has caused this defendant to list and assess said property for taxation for city purposes and the plaintiff has levied and collected from defendant in each of said years the taxes on said property strictly in accordance with the provisions of plaintiff's charter.

Paragraph XIX.

The defendant for further answer herein says:

That while the city was bound to assess, levy and collect its taxes in pursuance of its charter, it nevertheless was entitled to all the information contained in the various reports and documents referred to in its petition and did in fact have full information of all
134 facts contained therein; that during all the years referred to in plaintiff's petition it was the rule, custom, habit, practice and system of the citizens of Carrollton, including its officials to assess and cause to be assessed the real estate in said city at an average of not more than 40% of its fair cash value and that personal property in said city has been likewise assessed and caused to be assessed at an average of not more than 30% of its fair cash value, and said facts are and have at all times been well and generally known to substantially all citizens of Carrollton, including all its officials; that this defendant has never given in its real estate in said city at less than 70% of its cash value and for five years last past has given the same in at 80% of its fair value and has given in its personal property in substantially the same proportion; that during all the years referred to it has paid largely more than its just proportion of the taxes paid to said city and as to personal property it has in fact paid at least one-ninth of the entire amount of tax paid to said city on personal property (including that sought to be again taxed in this action) as is shown by the assessment rolls of the city; that the assessment- as made by the State Board and set out in plaintiff's petition were made at 100% of the fair cash value of the whiskey, and the attempt now made by the plaintiff to collect the sums set out in the petition is under such circumstances unjust, unequitable and in violation of the rights vested in this defendant by the constitution of the State of Kentucky and especially in this that it is neither uniform nor equal and is likewise in violation of the Fourteenth Amendment to the Constitution of the United States.

Paragraph XX.

For further answer herein the defendant makes all the allegations of paragraphs XVII and XVIII and XIX hereof a part of this
135 paragraph as fully as if copied herein and further says:

That, having elected at all times while said property was

in the custody of this defendant and prior to July 7th, 1916 to assess, levy and collect from defendant the tax thereon in each year strictly in accordance with the provisions of its charter, and having failed to levy any tax on the alleged assessments by the State Board until such a long period of time after the property had been removed from defendant's custody, the plaintiff had no right in 1916 long after the removal of said property from defendant's warehouse and defendant's right to a lien had been lost, to then attempt to make a levy of taxes retrospectively for from one to ten years back and require this defendant to pay same and such attempt is both inequitable and unconscionable and would be to the great damage of defendant and by reason of the aforesaid acts of plaintiff it is estopped from setting up any such claims against this defendant as are made in this action and the defendant pleads and relies upon the aforesaid acts, both of omission and commission, on the part of plaintiff as an estoppel in bar of the claims alleged in the petition.

Paragraph XXI.

Further amending its answer the defendant (makes all the allegations of paragraph XVII of this amended answer a part of this, the XXI paragraph as fully as if copied herein, and) further alleges that it is at least entitled to credit for the payments made by it to plaintiff as set out in detail in paragraph XVII of this amended answer.

Paragraph XXII.

The defendant further says:

That the acts of the Board of Council of the city of Carrollton on July 7th, 1916, in attempting to modify and extend the tax levy of each or any year from and including 1907 up to and including 1915, and so as to cover any valuation or assessment made as of any date other than April 1st, in each year and the attempt to treat taxes as falling due at any other date then July 1st, in each year was void and in absolute conflict with the provisions of the charter of the city, to-wit, sections 3535 and 3536 of Kentucky Statutes, and the attempt in the passage of said ordinances of July 7th, 1916, to have the same to take effect as of date from one to ten years before they were in fact passed or published, when the plaintiff well knew the facts as alleged in Paragraph XVII hereof, and thereby mulct this defendant in interest and penalties is unjust, inequitable and void, when in fact at no time prior to said 7th day of July, 1916, was there any attempt on the part of the city to levy any ad valorem tax upon any property in Carrollton, except such as was assessed as of date April 1st, of each year, and would in fact be an ex post facto proceeding and is directly prohibited by the provisions of the charter governing the city, to wit, section 3542 of Kentucky Statutes in so far as it attempts to levy any tax for the years 1907, 1908, 1909, 1910, 1911, or either of them.

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Paragraph XXIII.

Defendant further states:

That the passage of the ordinances of date July 7th., 1916 for the purpose of levying taxes for the years 1907, 1908, 1909, 1910, and 1911 and the institution of this action for the purpose of collecting taxes, interest or penalties is an attempt to collect taxes on property in the city of Carrollton for more than five years last past and to the extent that the same is for more then five years last past the same is barred by the statutes of limitation in such cases made and provided and especially by the limitation contained in the charter governing said city, to-wit, section 3542 of Kentucky Statutes and
137 the defendant now pleads the statu-es in such cases made and provided in bar of any claim for taxes, interest or penalties for either of said years 1907, 1908, 1909, 1910, and 1911.

Paragraph XXIV.

For further answer herein defendant says:

That as to the taxes for the years 1915 and 1916, at the request and solicitation of plaintiff this defendant on the 23d. day of April, 1915, agreed with the plaintiff not to assess its bonded whiskey in bulk for that year or thereafter but to pay its taxes thereon on the basis of the number of barrels withdrawn as shown by the withdrawal reports made to the state and county but upon a valuation of $8.00 per barrel. that being 60% of the fair cash value of the whiskey in bond, and being as high, if not a higher valuation than the fair average value on which property was and is assessed in said city, said payments to begin with the withdrawal report to be made as of date Sept. 1st. 1915, and the payments made on the bulk assessments theretofore made to be accepted as in full of all past claims and this agreement -as been fully kept and performed by defendant up to the date of the filing of this answer.

Wherefore defendant prays:

1. That plaintiff's petition be forthwith dismissed, or that if it be not dismissed,

2. That by reason of the complicated accounts involved in the action and by reason of the equitable defenses plead, the action be transferred to equity.

3. That the defendant be granted all proper relief, both legal and equitable.

4. That the plaintiff take nothing and that the defendant recover its costs herein expended.

WINSLOW & HOWE,
Attorneys for Defendant.

138 *Order.*

And, at the November Term, 4th day of December, 1916, this order was made:

Affir. Alleg. of Ans. Controverted.

By agreement of parties the affirmative allegations in defendant's answer and amended answer are controverted of record, herein.

Order.

Order in Court, same Term, same Day.

Case Transferred to Ord. Docket.—Plff. Obj. and Ex.

On motion of defendant this action is now transferred to the equity side of the docket, to which plaintiff objects and excepts.

Order.

Order in Court, April Term, April 23, 1917.

Setting Aside Order Contro., &c.

By agreement of the parties, herein, so much of the order entered herein on the 4th day of December, 1916 as controverted of record the affirmative allegations in the Amended Answer herein, is now set aside.

Order.

Order in Court, April Term, April 23, 1917.

Offering to File 2nd Amd. Pet.

Came the parties and the plaintiff, by its attorney, offers to file second amended petition, herein, to the filing of which the defendant, by attorney, objected and the Court not being advised, took time.

Second Amended Petition.

The Second Amended Petition, referred to in the foregoing order, is in words as follows, to-wit:

Carroll Circuit Court.

CITY OF CARROLLTON, Plaintiff,

vs.

JETT BROS. DISTILLING CO., Defendant.

The plaintiff, City of Carrollton, by way of Second Amended Petition herein, to conform to the facts and conditions as they now exist by leave of the Court amends its original and Amended and Supplemental petition herein as follows:

Paragraph IX.

Plaintiff amends the ninth paragraph of its original and
139 amended and supplemental petition herein and by way of amendment states that by mistake of the draftsman of the Original petition the exhibit therein referred to as "D2" *and* therein referred to as a copy of the statement made by Jett Bros. Distilling Co., on the — day of January, 1914, to the Auditor of Public Accounts of the State of Kentucky, when in fact and in truth said exhibit is a copy of the records, of the Auditor of Public Accounts of the State of Kentucky showing the quantity and kind of spirits reported withdrawn from said warehouses by the defendant, Jett Bros. Distilling Co. during the four months preceeding January 1st, 1914, as reported to the Auditor of Public Accounts by the defendant on the — day of January, 1914, which report or statement has been lost or misplaced and cannot be found.

Plaintiff further states that the exhibit filed with the Amended and Supplemental Petition herein as exhibit "D8" in lieu of the exhibit filed with the original petition herein marked "D2" is a copy of the records of the Auditor of Public Accounts of the State of Kentucky showing the quantity and kind of spirits reported withdrawn from its warehouses in the City of Carrollton, Ky., during the four months preceeding January 1st, 1914, by the defendant on the — day of January, 1914.

Paragraph XII.

Plaintiff amends the twelfth paragraph of its original and Amended and Supplemental Petition herein and by way of Amendment states that by mistake of the draftsman of the original petition the exhibit therein referred to as "E2" is therein referred to as a copy of the statement made by Jett Bros. Distilling Co. on the — day of January, 1915, to the Auditor of Public Accounts of the State of Kentucky, when in fact and in truth said exhibit is a copy of the records of the Auditor of Public Accounts of the State of Kentucky showing the quantity and kind of spirits reported withdrawn from said warehouses by the Defendant, Jett Bros.
140 Distilling Co., during the four months preceeding January 1st, 1915, as reported to the Auditor of Public Accounts of the State of Kentucky by the defendant on the — day of January, 1915 which report or statement has been lost or misplaced and cannot be found.

Plaintiff further amends its original and amended and supplemental petition and by way of amendment states that by mistake of the draftsman of the amended and supplemental petition herein the exhibit filed with the twelfth paragraph of said amended and supplemental petition in lieu of exhibit "E2" is marked "E8" when in fact said exhibit is marked as filed "E10" and plaintiff states that said exhibit "E10" is a copy of the records of the Auditor of Public

Accounts of the State of Kentucky showing the quantity and kind of spirits reported withdrawn from its warehouses in the City of Carrollton, Ky., during the four months preceeding January 1st, 1915, by the defendant on the — day of January, 1915, to the Auditor of Public Accounts of the State of Kentucky.

Paragraph XIV.

Plaintiff amends the fourteenth paragraph of its original and amended and supplemental petition herein and by way of amendment states that by mistake of the draftsman of the original petition the exhibit therein referred to as exhibit "E4" is therein referred to as a copy of the statement made by the defendant, Jett Bros. Distilling Co. on the — day of September, 1915, to the Auditor of Public Accounts of the State of Kentucky, when in fact and in truth said exhibit is a copy of the records of the Auditor of Public Accounts of the State of Kentucky showing the quantity and kind of spirits reported withdrawn from its warehouses in the City of Carrollton,
141 Ky., by the defendant Jett Bros. Distilling Co., during the four months preceeding September 1st, 1915, as reported to the Auditor of Public Accounts of the State of Kentucky by a statement made by the defendant to the Auditor on the — day of September, 1915, which statement has been lost or misplaced and cannot be found.

Plaintiff further states that by mistake of the draftsman of the amended and supplemental petition exhibit "E10" is therein referred to as being filed with paragraph XIV when in fact and in truth exhibit "E10" was filed with paragraph XII and is now referred to and made a part of paragraph XIV, and is filed in lieu of exhibit "E4" which by leave of the Court has been withdrawn from the records herein. Plaintiff states that exhibit "E10" is a copy of the records of the Auditor of Public Accounts of the State of Kentucky showing the quantity and kind of spirits reported withdrawn from its warehouses in the City of Carrollton, Ky., during the four months preceeding September 1st, 1915, by the defendant on the — day of September, 1915.

Wherefore, plaintiff prays as in its Amended and supplemental Petition herein and for all proper relief.

J. A. DONALDSON & SONS,
Attorneys for Plaintiff.

Order.

Order in Court, April Term, 28th day of April, 1917.

Correcting Order as of Date April 25.

Came the plaintiff, by attorneys, and it appearing that plaintiff filed demurrer to the 17th, 18th, 19th, 20th, 22nd, 23d, and 24th

paragraphs of defendant's amended answer, herein, in Court April 25th, 1917, same is now filed of record and this order is now made and entered now as if made on April 25, 1917.

Order.

Order in Court, April Term, 28th day of April, 1917.

Demurrer to Ans. Sus.—Dft. Ex.

Came the parties and the Court, being advised, sustained plaintiff's demurrer to paragraphs 17, 18, 19, 20, 22 and 24 of defendant's amended answer, herein, and overruled said demurrer to paragraph 23 of said amended answer to which ruling of the Court de-
142 fendant excepts insofar as it sustains any part of said demurrer and plaintiff excepts to said ruling of the Court insofar as it overrules its demurrer to paragraph 23 of said amended answer herein.

Order.

Order in Court, April Term, 28th day of April, 1917.

Mo. to Strike from Amd. Ans.

Came the plaintiff and filed a written motion to strike certain words and figures from paragraph 21 of defendant's Amended Answer, herein, to which defendant objected and the Court, being advised, overruled said objection and sustained said motion, and the words and figures contained in said written motion are now stricken from said paragraph to which ruling of the Court, defendant excepts.

Motion to Strike from Amended Answer.

The written Motion to strike certain words and figures from paragrauh 21 of defendant's amended answer, referred to in the foregoing order, is in words as follows, to-wit:

Carroll Circuit Court.

CITY OF CARROLLTON, Plaintiff,

VS.

JETT BROS. DISTILLING CO., Defendant.

The plaintiff, City of Carrollton, moves the Court to strike from defendant's Amended Answer herein the following words and figures in Paragraph XXI of said Amended Answer beginning with the word, "makes" in the first line of the XXI paragraph on the 9th page of said Amended Answer and continuing through the word "and"

in the 4th line of the XXI paragraph on the 9th page of said amended Answer, to wit: "makes all the allegations of paragraph XVII of this Amended answer a part of this, the XXI paragraph as fully as if copied herein, and."

J. A. DONALDSON & SONS,
Attorneys for Plaintiff.

143 *Order.*

Order in Court, April Term, 28th day of April, 1917.

Affi. Alleg. 23 Par. Con.

By agreement of parties the affirmative allegations in the 23rd paragraph of defendant's amended answer herein are now controverted of record.

Order.

Order in Court, April Term, 28th day of April, 1917.

Offering to File of Rec. Amd. and Sup. Pet.

Came the plaintiff, by its Attorneys, and offered to file of record its amended and Supplemental Petition, herein, together with the exhibits, therein referred to, which were filed in the Clerk's office on the 13th day of April, 1917, on which Amended and Supplemental Petition summons duly issued and executed on the defendant, on the same date, to the filing of which defendant objected, and the Court, being advised, overruled said objection and permitted same to be, and same is now, filed of record, to which defendant excepts.

Amended and Supplemental Petition.

The Amended and Supplemental Petition referred to in the foregoing order is in words and figures as follows, to-wit:

Carroll Circuit Court.

CITY OF CARROLLTON, Plaintiff,

vs.

JETT BROS. DISTILLING CO., Defendant.

The plaintiff, City of Carrollton, by way of amended and Supplemental Petition herein to conform to the facts and conditions as they now exist by leave of the Court amends its original petition herein as follows:

Paragraph I.

Plaintiff amends the first paragraph of its original petition herein by withdrawing the exhibits filed with said paragraph marked "A," "B," "C," "D," "E," "F," "G," "H," "I," and "J," respectively, and in lieu thereof files herewith as part hereof exhibits marked "AS," "BS," "CS," "DS," "ES," "FS," "GS," "HS," "IS," and "JS" respectively.

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Paragraph II.

Plaintiff amends the second paragraph of its original petition herein by withdrawing the exhibit filed with said paragraph marked "A2" and in lieu thereof files herewith as part hereof an exhibit marked "A8."

Plaintiff further amends said paragraph by striking out the following words and figures in the 7th line on the 7th page of said petition, to wit, "November 1st," and inserting in lieu thereof the following words and figures to-wit: "September 1st" also by striking out the following words and figures on the 17th line on the 7th page of said petition, to-wit: "November 1st" and inserting in lieu thereof the following words and figures, to-wit: "September 1st."

For further amendment to said paragraph plaintiff states that on the 11th day of April, 1917 it made demand of the defendant, Jett Bros. Distilling Co., for the payment of the following sums due it for taxes, interest and penalties as stated in said paragraph, to-wit: the sum of $266.09 for taxes for the years 1907, 1908, 1909, 1910, and 1911 on said distilled spirits which had been withdrawn from bond during the four months preceeding September 1st, 1911, and the further sum of $23.52 interest on taxes for each of said years' assessment until September 1st, 1911 and the further sum of $21.88 eight per cent penalty on said delinquent taxes and the further sum of $53.21 twenty per cent penalty on said delinquent taxes and the further sum of $97.45 interest until April 10th, 1917, on said taxes and interest which became due September 1st, 1911. No part thereof has been paid.

Paragraph III.

Plaintiff amends the third paragraph of its original petition herein by withdrawing the exhibit filed with said paragraph marked
145 "B2" and in lieu thereof files herewith as part hereof an exhibit marked "B8."

For further amendment to said paragraph plaintiff states that by an ordinance of the City of Carrollton, Ky., entitled "An ordinance Levying an Ad Valorem Tax for the year 1912 on all taxable property in the City of Carrollton, Ky. April 1st, 1912" duly passed and adopted by the Board of Council of the City of Carrollton, Ky. on the 4th day of April, 1917 and duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, Ky., a tax of seve*rth*-five cents on each one hundred dollars worth of taxable

property in the City of Carrollton as same appears from the asse ments and valuations made for said City for the year 1912 was du levied for the year 1912. A duly attested copy of said ordinance filed herewith as part hereof marked "2X".

For further amendment to said paragraph plaintiff states that the 11th day of April, 1917, it made demand of the defendant, Je Bros. Distilling Co., for the payment of the following sums due for taxes, interest and penalties as stated in said paragraph, to-wi the sum of $375.30 for taxes for the years 1907, 1908, 1909, 191 1911, and 1912 on said distilled spirits which had been withdraw from bond during the four months preceeding January 1st, 191 and the further sum of $28.27 interest on taxes for each of said year assessment until January 1st, 1912, and the further sum of $30.0 eight per cent penalty on said delinquent taxes and the further su of $75.07 twenty per cent penalty on said delinquent taxes and th further sum of $127.77 interest from January 1st, 1912, until Apr 10th, 1917, on said taxes and interest which became due January 1 1912. No part thereof has been paid.

Plaintiff further amends said paragraph by striking out th
146 following words and figures in the 5th line on the 12th pag of said petition, to-wit: "November 1st." and inserting in lie thereof the following words and figures, to-wit: "January 1st." als by striking out the following word in the 20th line on the 12th pag of said petition, to-wit: "November" and inserting in lieu thereof th following word, to-wit: "January."

Paragraph IV.

Plaintiff amends the fourth paragraph of its original petitio herein by withdrawing the exhibit filed with said paragraph marke "B3" and in lieu thereof files herewith as part hereof an exhibi marked "B9."

By way of further amendment to said paragraph the plaintif states that by an ordinance of the City of Carrollton, Ky. entitle "An Ordinance Levying an Ad Valorem Tax for the year 1912 on a taxable property in the City of Carrollton, Ky. April 1st, 1912," duly passes and adopted by the Board of Council of the City of Carrollto Ky. on the 4th day of April, 1917, and thereafter duly published i the Carrollton, News, a weekly newspaper published in the Cit of Carrollton, Ky., a tax of seventy-five cents on each one hundre dollars' worth of taxable property in the City of Carrollton, Ky. a same appears from the assessments and valuations made for said Cit for the year 1912, was duly levied for the year 1912. A duly at tested copy of said ordinance has heretofore been filed with thi amended petition marked "2X," and same is now made a par hereof.

For further amendment to said paragraph plaintiff states that the 11th day of April, 1917, it made demand of the defendant, Je Bros. Distilling Co., for the payment of the following sums due for taxes, interest and penalties as stated in said paragraph, to wi $286.32 for taxes for the years 1907, 1908, 1909, 1910, 1911 an

1912 on said distilled spirits which had been withdrawn from bond during the four months preceeding the first day of May, 1912,
147 and the further sum of $22.17 interest until May 1st, 1912, on taxes for each of said years' assessment, and the further sum of $22.90 eight per cent penalty on said delinquent taxes and the further sum of $57.28 twenty per cent penalty on said delinquent taxes and the further sum of $91.52 interest from May 1st, 1912, until April 10, 1917 on said taxes and interest which became due May 1st, 1912. No part thereof has been paid.

Plaintiff further amends said paragraph by striking out the word "November" on the 5th line on the 17th page of said petition and inserting in lieu thereof the word "May," also by striking out the word "November" in the 20th line on the 17th page of said petition and inserting in lieu thereof the word, "May."

Paragraph V.

Plaintiff amends the fifth paragraph of its original petition herein by withdrawing the exhibit filed with said paragraph marked "B4" and in lieu thereof files herewith as part hereof an exhibit marked "B10."

By way of further amendment to said paragraph the plaintiff states that by an ordinance of the City of Carrollton, Ky. entitled "An Ordinance Levying an Ad Valorem Tax for the year 1912 on all taxable property in the City of Carrollton, Ky. April 1st, 1912" duly passed and adopted by the Board of Council of the City of Carrollton, Ky. April 4th, 1917, and thereafter duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, Ky., a tax of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton, Ky. as same appears from the assessments and valuations made for said City for the year 1912, was duly levied for the year 1912. A duly attested copy of said ordinance has been heretofore filed with this amended petition marked "2X" and the same is now made a part hereof.

148 For further amendment to said paragraph plaintiff states that on the 11th day of April, 1917, it made demand of the defendant, Jett Bros. Distilling Co., for the payment of the following sums due it for taxes, interest and penalties as stated in said paragraph, to-wit; $222.94 for taxes for the years 1907, 1908, 1909, 1910, 1911, and 1912 on said distilled spirits which had been withdrawn from bond during the four months next preceeding September 1st, 1912, and the further sum of $12.87 interest until September 1st, 1912, on taxes for each of said year's assessment, and the further sum of $17.83 eight per cent penalty on said delinquent taxes and the further sum of $44.58 twenty per cent penalty on said delinquent taxes and the further sum of $64.41 interest from September 1, 1912 until April 10th, 1917 on said taxes and interest which became due September 1st, 1912. No part thereof has been paid.

Plaintiff further amends said paragraph by striking out the word "November" on the 5th line on the 22nd page of said petition and

inserting in lieu thereof the word "September," also by striking out the word "November" in the 20th line on the 22nd page of said petition and inserting in lieu thereof the word "September."

Paragraph VI.

Plaintiff amends the sixth paragraph of its original petition herein by withdrawing the exhibit filed with said paragraph marked "C2" and in lieu thereof files herewith as part hereof an exhibit marked "C8."

By way of further amendment to said paragraph the plaintiff states that by an ordinance of the City of Carrollton, Ky. entitled "An Ordinance Levying an Ad Valorem Tax for the year 1912 on all taxable property in the City of Carrollton, Ky. Aprol 1st, 1912" duly passed and adopted by the Board of Council of the City of Carrollton, Ky. April 4th, 1917, and thereafter published in the
149 Carrollton News, a weekly newspaper published in the City of Carrollton, Ky., a tax of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton, Ky., as same appears from the assessments and valuations made for said City for the year 1912, was levied for the year 1912. A duly attested copy of said ordinance has been heretofore filed with this amended and supplemental petition marked "2X" and same is now made a part hereof.

For further amendment to said paragraph plaintiff states that on the 11th day of April, 1917, it made demand of the defendant, Jett Bros. Distilling Co., for the payment of the following sums due it for taxes, interest and penalties as stated in said paragraph, to-wit: $251.14 for taxes for the years 1907, 1908, 1909, 1910, 1911, 1912 and 1913 on said distilled spirits which had been withdrawn from bond during the four months preceeding January 1st, 1913, and the further sum of $18.93 interest until January 1st, 1913, on taxes for each of said year's assessment, and the further sum of $20.09 eight per cent penalty on said delinquent taxes, and the further sum of $50.22 twenty per cent penalty on said delinquent taxes, and the further sum of $69.30 interest from January 1st, 1913, until April 10th 1917 on said taxes and interest which became due January 1st, 1913. No part thereof has been paid.

Plaintiff further amends said paragraph by striking out the word "November" on the 9th line on the 27th page of said petition and inserting in lieu thereof the word "January" also by striking out the word "November" in the 20th line on the 27th page of said petition and inserting in lieu thereof the word "January."

Paragraph VII.

Plaintiff amends the seventh paragraph of its original petition herein by withdrawing the exhibit filed with said paragraph
150 marked "C3" and in lieu thereof files herewith as part hereof an exhibit marked "C9."

By way of further amendment to said paragraph plaintiff states

that by an ordinance of the City of Carrollton, Ky., entitled "An Ordinance Levying an Ad Valorem Tax for the year 1912 on all taxable property in the City of Carrollton April 1st, 1912," duly passed and adopted by the Board of Council of the City of Carrollton, Ky. April 4th, 1917, and thereafter duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, Kentucky, a tax of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton, Ky., as same appears from the assessments and valuations made for said City for the year 1912, was duly levied for the year 1912. A duly attested copy of said ordinance has been heretofore filed with this amended and supplemental petition marked "2X" and same is now made a part hereof.

For further amendment to said paragraph plaintiff states that on the 11th day of April, 1917 it made demand of the defendant, Jett Bros. Distilling Co., for the payment of the following sums due it for taxes, interest and penalties as stated in said paragraph, to-wit; $176.44 for taxes for the years 1907, 1908, 1909, 1910, 1911, 1912, and 1913 on said distilled spirits which had been withdrawn from bond during the four months preceeding May 1st, 1913, and the further sum of $14.55 interest until May 1st, 1913 on taxes for each of said year's assessment, and the further sum of $14.11 eight per cent penalty on said delinquent taxes and the further sum of $35.28 twenty per cent penalty on said delinquent taxes and the further sum of $45.20 interest from May 1st, 1913 until April 10th 1917 on said taxes and interest which became due May 1st, 1913. No part thereof has been paid.

Plaintiff further *demands* said paragraph by striking out the word "November" on the 9th line on the 32nd page of
151 said petition and inserting in lieu thereof the word "May," also by striking out the word "November" in the 20th line on the 32nd page of said petition and inserting in lieu thereof the word, "May."

Paragraph VIII.

Plaintiff amends the eighth paragraph of its original petition herein by withdrawing the exhibit filed with said paragraph marked "C4" and in lieu thereof it files herewith as part hereof an exhibit marked "C10."

By way of further amendment to said paragraph plaintiff states that by an ordinance of the City of Carrollton, Ky., entitled "An Ordinance Levying an Ad Valorem Tax for the years 1912 on all taxable property in the City of Carrollton April 1st, 1912" duly passed and adopted by the Board of Council of the City of Carrollton, Ky. April 4th, 1917, and thereafter duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, Ky., a tax of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton, Kentucky, as same appears from the assessments and valuations made for said City for the year 1912, was duly levied for the year 1912. A duly

attested copy of said ordinance has been heretofore filed with this amended petition marked "2X" and same is now made part hereof.

For further amendment to said paragraph plaintiff states that on the 11th day of April, 1917, it made demand of the defendant, Jett Bros. Distilling Co. for the payment of the following sums due it for taxes, interest and penalties as stated in said paragraph, to-wit; $306.10 for taxes for the years 1907, 1908, 1909, 1910, 1911, 1912 and 1913 on said distilled spirits which had been withdrawn from bond during the four months preceeding September 1st, 1913, and the further sum of $25.72 interest until September 1, 1913
152 on taxes for each of said year's assessment, and the further sum of $24.48 eight per cent penalty on said delinquent taxes and the further sum of $61.22 twenty per cent penalty on said delinquent taxes and the further sum of $71.91 interest from September 1st, 1913 until April 10th, 1917 on said taxes and interest which became due September 1st, 1913. No part thereof has been paid.

Plaintiff further amends said paragraph by striking out the word "November," on the 9th line on the 37th page of said petition and inserting in lieu thereof the word "September," also by striking out the word "November" in the 20th line on the 37th page of said petition and inserting in lieu thereof the word "September."

Paragraph IX.

Plaintiff amends the ninth paragraph of its original petition herein by withdrawing the exhibit filed with said paragraph marked "D2" and in lieu thereof files herewith as part hereof an exhibit marked "D8."

By way of further amendment to said paragraph plaintiff states that by an ordinance of the City of Carrollton, Ky. entitled "An Ordinance Levying an Ad Valorem Tax for the year 1912 on all taxable property in the City of Carrollton, Ky. April 1st, 1912," duly passed and adopted by the Board of Council of the City of Carrollton, Ky. April 4th, 1917, and thereafter duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, Ky., a tax of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton, Ky. as same appears from the assessments and valuations made for said City for the year 1912, was duly levied for the year 1912. A duly attested copy of said ordinance has been heretofore filed with this amended petition marked "2X" and same is now made a part hereof.
153 For further amendment to said paragraph plaintiff states that on the 11th day of April, 1917, it made demand of the defendant, Jett Bros. Distilling Co., for the payment of the following sums due it for taxes, interest and penalties as stated in said paragraph, to wit: $385.60 taxes for the years 1907, 1908, 1909, 1910, 1911, 1912, 1913 and 1914 on said distilled spirits which had been withdrawn from bond during the four months preceeding January 1st, 1914, and the further sum of $22.48 interest until January 1st, 1914, on taxes for each of said year's

assessment, and the further sum of $30.84 eight per cent penalty on said delinquent taxes and the further sum of $77.12 twenty per cent penalty on said delinquent taxes and the further sum of $80.25 interest from January 1st, 1914, until April 10th, 1917, on said taxes and interest which became due January 1st, 1914. No part thereof has been paid.

Plaintiff further amends said paragraph by striking out the word "November" in the 21st line on the 42nd page of said petition and inserting in lieu thereof the word "January," also by striking out the word "November" in the 31st line on the 42nd page of said petition and inserting in lieu thereof the word "January."

Paragraph X.

Plaintiff amends the tenth paragraph of its original petition herein by withdrawing the exhibit filed with said paragraph marked "D3" and in lieu thereof files herewith as part hereof an exhibit marked "D9."

By way of further amendment to said paragraph plaintiff states that by an ordinance of the city of Carrollton, Kentucky, entitled "An Ordinance Levying an Ad Valorem Tax for the year 1912 on all taxable property in the City of Carrollton, Kentucky, April 1st, 1912," duly passed and adopted by the Board of Council of the City of Carrollton, Kentucky, April 4th, 1917, and
154 thereafter duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, Ky., a tax of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton, Ky., as same appears from the assessments and valuations made for said City for the year 1912, was duly levied for the year 1912. A duly attested copy of said ordinance has been heretofore filed with this amended petition marked "2X" and same is now made part hereof.

For further amendment to said paragraph plaintiff states that on the 11th day of April, 1917, it made demand of the defendant, Jett Bros. Distilling Co., for the payment of the following sums due it for taxes, interest and penalties as stated in said paragraph, to-wit: $306.04 taxes for the years 1907, 1908, 1909, 1910, 1911, 1912, 1913 and 1914 on said distilled spirits which had been withdrawn from bond during the four months preceeding May 1, 1914, and the further sum of $20.68 interest until May 1, 1914, on taxes for each of said year's assessment, and the further sum of $24.48 eight per cent penalty on said delinquent taxes and the further sum of $61.20 twenty per cent penalty on said delinquent taxes and the further sum of $58.39 interest from May 1st, 1914, until April 10th, 1917, on said taxes and interest which became due May 1st, 1914. No part thereof has been paid.

Plaintiff further amends said paragraph by striking out the word "November" in the 21st line on the 47th page of said petition and inserting in lieu thereof the word, "May," also by striking out

the word "November" in the 31st line on the 47th page of sai
petition and inserting in lieu thereof the word "May."

Paragraph XI.

Plaintiff amends the eleventh paragraph of its original petitio
herein by withdrawing the exhibit filed with said paragrap
155 marked "D4" and in lieu thereof files herewith as pa
hereof an exhibit marked "D10."

By way of further amendment to said paragraph plaintiff stat
that by an ordinance of the City of Carrollton, Ky., entitled "A
Ordinance Levying an Ad Valorem Tax for the year 1912 on a
taxable property in the City of Carrollton, April 1st, 1912," dul
passed and adopted by the Board of Council of the City of Carrollto
Ky., April 4th, 1917, and thereafter published in the Carrollto
News, a weekly newspaper published in the City of Carrollton, Ky
a tax of seventy-five cents on each one hundred dollars' worth
taxable property in the City of Carrollton, Ky., as same appea
from the assessments and valuations for the year 1912 made f
said City, was duly levied for the years 1912. A duly attested co
of said ordinance has been heretofore filed with this amended pe
tion marked "2X" and same is now made part hereof.

For further amendment to said paragraph plaintiff states t
on the 11th day of April, 1917, it made demand of the defendan
Jett. Bros. Distilling Co., for the payment of the following sum
due it for taxes, interest and penalties as stated in said paragra
to-wit: $291.52 taxes for the years 1907, 1908, 1909, 1910, 191
1912, 1913 and 1914 on said distilled spirits which had been with
drawn from bond during the four months preceeding September 1s
1914, and the further sum of $21.88 interest until September 1s
1914, on taxes for each of said year's assessment, and the furthe
sum of $23.31 eight per cent penalty on said delinquent taxes an
the further sum of $58.30 twenty per cent penalty on said delinquen
taxes and the further sum of $49.07 interest from September 1s
1914, until April 10th, 1917. on said taxes and interest which
became due September 1st, 1914. No part thereof has been paid

Plaintiff further amends said paragraph by striking ou
156 the word "November" in the 21st line on the 52nd pag
of said petition and inserting in lieu thereof the word
"September," also by striking out the word "November" in the
31st line on the 52nd page of said petition and inserting the word
"September."

Paragraph XII.

Plaintiff amends the twelfth paragraph of its original petition
herein by withdrawing the exhibit filed with said paragraph marked
"E2" and in lieu thereof files herewith as part hereof *as* exhibit
marked "E8."

By way of further amendment to said paragraph plaintiff state
that by an ordinance of the City of Carrollton, Ky., entitled "An

ordinance Levying an Ad Valorem Tax for the year 1912 on all taxable property in the City of Carrollton, Ky., April 1st, 1912," duly passed and adopted by the Board of Council of the City of Carrollton, Ky., April 4th, 1917, and thereafter published in the Carrollton News, a weekly newspaper published in the City of Carrollton, Ky., a tax of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton, Ky., as same appears from the assessments and valuations made for the year 1912 for said City, was duly levied for the year 1912. A duly attested copy of said ordinance has heretofore been filed with this amended petition marked "2X" and same is now made part hereof.

For further amendment to said paragraph plaintiff states that on the 11th day of April, 1917, it made demand of the defendant, Jett. Bros. Distilling Co., for the payment of the following sums due it for taxes, interest and penalties as stated in said paragraph to-wit: $459.58 taxes for the years 1908, 1909, 1910, 1911, 1912, 1913, 1914 and 1915 on said distilled spirits which had been withdrawn from bond during the four months preceeding January 1st, 1915, and the further sum of $26.19 interest until January 1st, 1915, on taxes for each of said year's assessment, and the further sum of $36.76 eight per cent penalty on said delinquent taxes and the further sum of $91.91 twenty per cent penalty on said delinquent taxes and the further sum of $66.38 interest from January 1st, 1915, until April 10th, 1917, on said taxes and interest which became due January 1st, 1915. No part thereof has been paid.

Plaintiff further amends said paragraph by striking out the word "November" in the 18th line on the 57th page of said petition and inserting in lieu thereof the word "January," also by striking out the word "November" in the 27th line on the 57th page of said petition and inserting in lieu thereof the word "January."

Paragraph XIII.

Plaintiff amends the thirteenth paragraph of its original petition herein by withdrawing the exhibit filed with said paragraph marked "E3" and in lieu thereof files herewith as part hereof an exhibit marked "E9."

By way of further amendment to said paragraph plaintiff states that by an ordinance of the City of Carrollton, Ky., entitled "An Ordinance Levying an Ad Valorem Tax for the year 1912 on all taxable property in the City of Carrollton, Ky., April 1st, 1912," duly passed and adopted by the Board of Council of the City of Carrollton, April 4th, 1917, and thereafter duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, Ky., a tax of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton, Ky., as same appears from the assessments and valuations made for the year 1912 for said City, was duly levied for the year 1912. A duly attested

copy of said ordinance has been heretofore filed with this amend petition marked "2X" and same is now made a part hereof.

For further amendment to said paragraph plaintiff states th on the 11th day of April, 1917, it made demand of the defendan Jett Bros. Distilling Co., for the payment of the followi
158 sums due it for taxes, interest and penalties as stated in sa paragraph to wit: $430.90 taxes for the years 1908, 190 1910, 1911, 1912, 1913, 1914 and 1915 on said distilled spiri which had been withdrawn from bond during the four mont preceeding May 1st, 1915, and the further sum of $29.44 intere until May 1st, 1915, on taxes for each of said year's assessmen and the further sum of $34.47 eight per cent penalty on sa delinquent taxes and the further sum of $86.18 twenty per ce penalty on said delinquent taxes and the further sum of $53.7 interest from May 1st, 1915, until April 10th, 1917, on said tax and interest which became due May 1st, 1915. No part there has been paid.

Plaintiff further amends said paragraph by striking out the wor "November" in the 18th line on the 62nd page of said petition an inserting in lieu thereof the word "May," also by striking out th word "November" in the 27th line on the 62nd page of said petitio and inserting in lieu thereof the word "May."

Paragraph XIV.

Plaintiff amends the fourteenth paragraph of its original petitio by withdrawing the exhibit filed with said paragraph marked "E4 and in lieu thereof files herewith as part hereof an exhibit mark "E10."

By way of further amendment to said paragraph plaintiff stat that by an ordinance of the City of Carrollton, Ky., entitled "A Ordinance Levying an Advalorem Tax for the year 1912 on all ta able property in the City of Carrollton, Ky., April 1st, 1912" dul passed and adopted by the Board of Council of the City of Carrollto Ky., April 4th, 1917, and thereafter published in the Carrollto News, a weekly newspaper published in the City of Carrollton, Ky., tax of seventy-five cents on each one hundred dollars' worth
159 of taxable property in the City of Carrollton, Ky., as sam appears from the assessment and valuations made for the yea 1912 for said City was duly levied for the year 1912. A dul attested copy of said ordinance has been heretofore filed with thi amended petition marked "2X" and same is now made part hereof.

For further amendment to said paragraph plaintiff states that o the 11th day of April, 1917, it made demand of the defendant, Jet Bros. Distilling Co., for the payment of the following sums due i for taxes, interest and penalties as stated in said paragraph, to-wit: $359.95 taxes for the years, 1908, 1909, 1910, 1911, 1912, 1913, 191 and 1915 on said distilled spirits which had been withdrawn during the four months preceeding September 1st, 1915, from bond and the further sum of $27.23 interest until September 1st, 1915, on taxes

for each of said years' assessment, and the further sum of $26.18 eight per cent penalty on said delinquent taxes and the further sum of $64.96 twenty per cent penalty on said delinquent taxes and the further sum of $32.60 interest from September 1st, 1915, until April 10th, 1917 on said taxes and interest which became due September 1st, 1915, and were unpaid September 16th, 1915. No part of said taxes, interest and penalties has been paid except the sum of $82.34 which was paid on September 10th, 1915.

Plaintiff further amends said paragraph by striking out the word "November" in the 21st line on the 67th page of said petition and inserting in lieu thereof the word "September."

Paragraph XV.

Plaintiff amends the fifteenth paragraph of its original petition herein by withdrawing the exhibit filed with said paragraph marked "F2" and in lieu thereof files herewith as part hereof an exhibit marked "F8."

160 By way of further amendment to said paragraph plaintiff states that by an ordinance of the City of Carrollton, Ky., entitled "An Ordinance Levying an Ad Valorem Tax for the year 1912 *pm* all taxable property in the City of Carrollton, Ky., April 1st, 1912" duly passed and adopted by the Board of Council of the City of Carrollton, Ky., on April 4, 1917, and thereafter published in the Carrollton News, a weekly newspaper published in the City of Carrollton, Ky., a tax of seventy-five cents on each one hundred dollars' worth of taxable property in the city of Carrollton, Ky., as same appears from the assessment and valuations for the year 1912, made for said City, was duly levied for the year 1912. A duly attested copy of said ordinance has been heretofore filed with this amended petition marked "2X" and same is now made part hereof.

For further amendment to said paragraph plaintiff states that on the 11th day of April 1917 it made demand of the defendant, Jett Bros. Distilling Company for the payment of the following sums due it for taxes, interest and penalties as stated in said paragraph, to-wit: $613.81 taxes for the years 1909, 1910, 1911, 1912, 1913, 1914, 1915 and 1916 on said distilled spirits which had been withdrawn from bond during the four months preceeding January 1st, 1916 and the further sum of $43.29 for interest until January 1, 1916, on said taxes for each of said year's assessment, and the further sum of $45.54 eight per cent penalty on said delinquent taxes and the further sum of $113.85 twenty per cent penalty on said delinquent taxes and the sum of $43.64 for interest from January 1st, 1916, until April 10th, 1917, on said taxes and interest which became due January 1st, 1916, and were unpaid January 16th, 1916, subject to a credit of $87.84 which sum was paid the plaintiff on January 10th, 1916. No part thereof has been paid except the credit hereinbefore referred to.

161 For further amendment to said paragraph plaintiff states that defendant is indebted to it in the further sum of $43.64

for interest from January 1, 1916, to April 10, 1917, on said taxes which became due January 1, 1916, and for interest at the rate of six per cent per annum from April 10, 1917, until paid on said taxes which became due January 1st, 1916 and are yet unpaid.

Paragraph XVI.

Plaintiff amends the sixteenth paragraph of its original petition herein by withdrawing the exhibit filed with said paragraph marked "F3" and in lieu thereof files herewith as part hereof an exhibit marked "F9."

By way of further amendment to said paragraph plaintiff states that by an ordinance of the City of Carrollton, Ky., entitled "An Ordinance Levying an Ad Valorem Tax for the year 1912 on all taxable property in the City of Carrollton, Ky., April 1st, 1912" duly passed and adopted by the Board of Council of the City of Carrollton, Ky., April 4th, 1917 and thereafter published in the Carrollton News, a weekly newspaper published in the City of Carrollton, Ky., a tax of seventy-five cents on each one hundred dollars' worth of taxable property in the City of Carrollton, Ky., as same appears from the assessment and valuations made for the year 1912 for said City, was duly levied for the year 1912. A duly attested copy of said ordinance has heretofore been filed with this amended petition marked "2X" and same is now made a part hereof.

For further amendment to said paragraph plaintiff states that on the 11th day of April, 1917, it made demand of the defendant, Jett Bros. Distilling Co., for the payment of the following sums due it for taxes, interest and penalties as stated in said paragraph,
162 to-wit; $562.11 taxes for the years 1909, 1910, 1911, 1912, 1913, 1914, 1915, and 1916 on said distilled spirits which had been withdrawn from bond during the four months preceeding May 1st, 1916 subject to a credit of $86.52 which was paid plaintiff by defendant on the 6th day of May, 1916, and the further sum of $43.69 for interest until May 1st, 1916, on said taxes for each of said year's assessment, and the further sum of $41.54 eight per cent penalty on said delinquent taxes and the further sum of $103.85 twenty per cent penalty on said delinquent taxes and the further sum of $29.43 for interest from May 1st, 1916 until April 10, 1917 on said taxes and interest which became due May 1st, 1916, and were unpaid May 16, 1917. No part thereof has been paid except the sum of $86.52 as hereinbefore referred to.

For further amendment to said paragraph plaintiff states that defendant is indebted to it in the further sum of $29.43 for interest from Jay 1, 1916 until April 10, 1917 on said taxes which became due May 1st, 1916 and were unpaid May 16th, 1916 and for interest at the rate of six per cent per annum from April 10th, 1917 until paid on said taxes which became due May 1st, 1916 and are yet unpaid.

Paragraph XVII.

The plaintiff reiterates the statements set out in paragraph 1 of the original petition herein and makes them a part hereof as fully as if set out herein and further states that the defendant, Jett Bros. Distilling Co. the owner and proprietor of bonded warehouses in which distilled spirits were stored situated in the City of Carrollton, Ky., did on the — day of September, 1916, make and transmit to the Auditor of Public Accounts of the State of Kentucky a statement subscribed and sworn to by J. F. Jett, Treasurer of Jett Bros. Distilling Co., showing the quantity and kind of spirits that had
163 been withdrawn from said warehouses during the four months next before the first day of September, 1916, the years in which such spirits were assessed for County, City, Town and taxing district taxation and the County and City in which said warehouses were situated in which said spirits were stored at the time of said assessments. A duly attested copy of said statement is filed herewith as part hereof marked "F4". Plaintiff states that by said statement the defendant reported to the Auditor of Public Accounts that 5 packages of whiskey which had been in bond and stored in said warehouses since 1909 and 81 packages of whiskey which had been in bond and stored in said warehouses since 1910 and 197 packages of whiskey which had been in bond and stored in said warehouses since 1911 and 1140 packages of whiskey which had been in bond and stored in said warehouses since 1912 and 84 packages of whiskey which had been in bond and stored in said warehouses since 1913 and 1 package of whiskey which had been in bond and stored in said warehouses since 1914 had been removed and withdrawn from said warehouses during the four months next before the first day of September, 1916. Plaintiff states that said spirits had been stored in said warehouses in the City of Carrollton, Ky., during the times stated in said statement and that each package contained one barrel of whiskey. Plaintiff states that the defendant failed to make and transmit to the Clerk of the Carroll County Court said statement showing the quantity and kind of spirits that had been withdrawn and removed from said warehouses during the four months next before the first day of September, 1916, which corresponded to the statement made to the Auditor of Public Accounts, and which was addressed to the Sheriff of Carroll County, Ky. Plaintiff states that said statement made in lieu of the one required to be made to
164 the Clerk of Carroll County Court, was filed in the office of the Clerk of the Carroll County Court and a duly attested copy of said statement is filed herewith as part hereof marked "F5." Plaintiff states that all of said spirits reported withdrawn from said warehouses by defendant's said statements were duly assessed for taxation for the City of Carrollton, Ky. by the State Board of Valuation and Assessment for each of the years said spirits were stored in said warehouses at the value hereinbefore stated to wit

1909 and 1910 $9.00 per barrel; for 1911 and 1912 $10.00 per ba
rel; for 1913, 1914, 1915 and 1916 $12.00 per barrel.

Plaintiff states that by a resolution duly passed by the Board
Council of the City of Carrollton, Ky. on the 2nd day of June, 19
and by an ordinance of the City of Carrollton, Ky. entitled "A
Ordinance Levying an Ad Valorem Tax for the year 1909 on
taxable property in the City of Carrollton, Ky. on April 1st, 190
duly passed and adopted by the Board of Council of the City
Carrollton, Ky. on the 7th day of July, 1916, and on the 13th d
of July, 1916, duly published in the Carrollton News, a week
newspaper published in the City of Carrollton, Ky., a tax for t
year 1909 of seventy-five cents on each one hundred dollars' wor
of taxable property in the City of Carrollton, Ky., as same appe
from the assessments and valuations made for the City of Carrollto
Ky. for the year 1909 was duly levied. A duly attested copy of s
ordinance and said resolution has been hereinbefore filed with t
original petition herein marked "Y3" and "X3" respectively, a
same are now made a part hereof. Plaintiff states that by a reso
tion of the City Council of the City of Carrollton, Ky., duly pas
and adopted on the 1st day of June, 1910 by the Board of Coun
of the City of Carrollton, Ky., and by an ordinance of said City
titled "An Ordinance Levying an Ad Valorem Tax for the ye
1910 on all taxable property in the City of Carrollton, K
165 on April 1st, 1910," duly passed and adopted by the Boa
of Council of the City of Carrollton, Ky. on the 7th day
July, 1916, and on the 13th day of July, 1916, duly published
the Carrollton News, a weekly newspaper published in the City
Carrollton, a tax for the year 1910 was duly levied on each one hu
dred dollars' worth of taxable property in the City of Carrollto
Ky., as same appears from the assessments and valuations made
said City for the year 1910. Duly attested copies of said resoluti
and said ordinance have been hereinbefore filed with the origi
petition herein marked "X4" and "Y4" respectively and same
now made a part hereof. Plaintiff states that by a resolution of t
City of Carrollton duly passed and adopted by the Board of Coun
of Carrollton on the 7th day of June 1911, and by an ordinance
the City of Carrollton, Ky., entitled "An Ordinance Levying an
Valorem Tax for the year 1911 on all Taxable Property in the C
of Carrollton, Ky. on April 1st, 1911," duly passed and adopted
the Board of Council of the City of Carrollton, Ky. on the 7th day
July 1916 and on the 13th day of July, 1916, duly published in t
Carrollton News, a weekly newspaper published in the City of C
rollton, Ky. a tax for the year 1911 of seventy-five cents was du
levied on each one hundred dollars' worth of taxable property in t
City of Carrollton as same appears from the assessments and valu
tions made for the year 1911 for said City. Duly attested copies
said resolution and said ordinance have been hereinbefore filed wi
the original petition herein marked "X5" and "Y5" respectively a
the same are now made a part hereof.

Plaintiff states that by an Ordinance of the City of Carrollton, K
entitled "An Ordinance Levying an Ad Valorem Tax for the ye

1912 on all taxable property in the City of Carrollton, Ky.
166 on April 1st, 1912" duly passed and adopted by the Board of Council of the City of Carrollton, Ky. on April 4th, 1917, and thereafter published in the Carrollton News, a weekly newspaper published in the City of Carrollton, Ky., a tax for the year 1912 of seventy-five cents was duly levied on each one hundred dollars' worth of taxable property in the City of Carrollton, Ky., as same appears from the assessments and valuations made for said City for the year 1912. A duly attested copy of said ordinance has been hereinbefore filed with this amended petition marked "2X" and same is now made a part hereof.

Plaintiff states that by a resolution of the City of Carrollton on the 18th day of June, 1913, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1913 on all Taxable Property in the City of Carrollton, Ky. April 1st, 1913" duly passed and adopted by the Board of Council of the City of Carrollton, Ky. on the 7th day of July, 1916, and on the 13th day of July 1916, published in the Carrollton News, a weekly newspaper published in the City of Carrollton, Ky., a tax for the year 1913 of seventy-five cents was duly levied for the year 1913 on each one hundred dollars' worth of taxable property in the City of Carrollton as same appears from the assessments and valuations made for said City for the year 1913. Duly attested copies of said resolution and said ordinance have been hereinbefore filed with the original petition herein marked "X7" and "Y7" respectively and same are now made a part hereof. Plaintiff states that by a resolution duly passed and adopted by the Board of Council of the City of Carrollton, Ky. on the 10th day of June, 1914, and by an ordinance of the City of Carrollton entitled "An Ordinance Levying an Ad Valorem Tax for the year 1914 on all Taxable property in the city of Carrollton, Ky. on April 1st, 1914," duly
167 passed and adopted by the Board of Council of the City of Carrollton on the 7th day of July, 1916 and on the 13th day of July 1916 duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, Ky., a tax for the year 1914 of seventy-five cents was duly levied on each one hundred dollars' worth of taxable property in the City of Carrollton, Ky., as same appears from the assessments and valuations made for said City for the year 1914. A duly attested copy of said resolution and said ordinance has been heretofore filed with the original petition herein marked "X8" and "Y8" respectively and same are now made a part hereof. Plaintiff states that by a resolution of the City of Carrollton duly passed by the Board of Council of the City of Carrollton, Ky. on the 10th day of June 1915, and by an ordinance of the City of Carrollton, Ky., entitled "An Ordinance Levying an Ad Valorem Tax for the year 1915 on all taxable property in the City of Carrollton, Ky., on April 1st, 1915" duly passed and adopted by the Board of Council of the City of Carrollton, Ky., July 7th, 1916 and thereafter duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, Ky., a tax for the year 1915 of seventy-five cents was duly levied on each one hundred

dollars' worth of taxable property in said City as same appears fr
the assessments and valuations made for said City for the year 19
Duly attested copies of said resolution and said ordinance have b
hereinbefore filed with the original petition herein marked "X
and "Y10" respectively and same are now made a part here
Plaintiff states that by an ordinance of the City of Carrollton
titled "An Ordinance Levying a Poll Tax on all Male Inhabita
over and above twenty one years of age residing in the City of C
rollton, Ky. on the first day of April, 1916, and an Ad V
168 lorem Tax on all Taxable property in the City of Carrollt
Ky. on April 1st, 1916 and providing the purposes for wh
said taxes shall be applied when collected" duly passed and adop
by the Board of Council of the City of Carrollton, Ky., on the 1
day of June 1916, and thereafter duly published in the Carroll
News, a weekly newspaper published in the City of Carrollton, K
a tax for the year 1916 of seventy-five cents was duly levied on e
one hundred dollars' worth of taxable property in the City of C
rollton, Ky., as same appears from the assessments and valuati
made for said City for the year 1916. A duly attested copy of s
ordinance has been heretofore filed with the original petition her
marked "X11" and same is now made a part hereof.

Plaintiff states that by virtue of the resolutions and ordinances
the City of Carrollton Levying a tax for the years 1909, 1910, 19
1912, 1913, 1914, 1915, and 1916 and by virtue of the assessme
made for said City for each of said years as set out in the origi
petition herein and by virtue of the ordinances of the City of C
rollton herein referred to and the defendant having the custo
of said distilled spirits in its warehouses in the City of Carrollt
Ky., during the times herein stated and by virtue of said statem
of whiskey withdraw- from said warehouses hereinbefore refer
to, the defendant became indebted and liable to plaintiff and is n
liable and indebted to plaintiff in the sum of $611.37 for taxes
the years 1909, 1910, 1911, 1912, 1913, 1914, 1915 and 1916
said distilled spirits which had been removed from bond during t
four months next before the first day of September 1916, and t
further sum of $48.22 interest on said taxes for each of said ye
assessment until September 1st, 1916, and the further sum of $38.
eight per cent penalty on said delinquent taxes and the fu
169 ther sum of $95.72 twenty per cent penalty on said de
quent taxes and the further sum of $17.54 interest fr
September 1st, 1916, until April 10th, 1917, on said taxes wh
were due September 1st, 1916 and are yet unpaid and interest fr
April 10th, 1917 until paid on said taxes which became due S
tember 1st, 1917.

Plaintiff states that said taxes interest and penalties are long p
due and no part -hereof has been paid except the sum of $180.
which was paid on the 9th day of September 1916 and that plain
is entitled to recover of the defendant, the sum of $478.63 taxes
the years 1909, 1910, 1911, 1912, 1913, 1914, 1915 and 1916
said distilled spirits as herein stated and the further sum of $38.
eight per cent penalty on said delinquent taxes and the further s

of $95.72 twenty per cent penalty on said delinquent taxes and the further sum of $17.54 interest on said taxes which were due September 1st, 1916, from September 1st, 1916 until April 10th, 1917 and interest at the rate of six per cent per annum from April 10th, 1917, until paid on the sum of $478.63.

Paragraph XVIII.

Plaintiff reiterates the statements set out in paragraph 1 of the original petition herein and makes them a part hereof as fully as if set out herein and further states that the defendant, Jett Bros. Distilling Co., is liable and indebted to it for City Taxes on distilled spirits contained in its warehouses in the City of Carrollton, Carroll County, Ky. owned and occupied and controlled by defendant, with interest and penalties thereon for the year 1917 as set forth and shown by the statements hereinafter set out and the tax list and report filed herewith and made a part hereof as hereinafter stated. Plaintiff states that between the first day of September and the first day of October in the year 1916 the defendant, Jett Bros. Distilling Co., as the owner and proprietor of bonded warehouses
170 in which distilled spirits were stored situated in the City of Carrollton, Carroll County, Kentucky, made a written statement which was subscribed and sworn to by J. F. Jett, as Treasurer (the manager and chief officer) of Jett Bros. Distilling Co., to the Auditor of Public Accounts of the State of Kentucky showing the quantity and kind of spirits in said warehouses on the first day of September of said years, the date when made, the County, City Town and taxing district in which said warehouses were situated, together with the statements as to what number of barrels of whiskey the U. S. Government tax had been paid and the date of the expiration of the bonded period on that part of said spirits on which the U. S. Government tax had not been paid and the fair cash value thereof at a voluntary sale. A duly attested copy of said statement is filed herewith as part hereof marked "K." Plaintiff states that said statement or report was submitted by the Auditor of Public Accounts of the State of Kentucky to the State Board of Valuation and Assessments of the State of Kentucky which board fixed the value of said spirits and assessed same for the purpose of State, County, City, Town and taxing District taxation for the year 1917 at $12.00 per barrel. Plaintiff states that said distilled spirits were duly assessed by said Board of Valuation and Assessment for State, County, City Town and taxing District taxation each of the years 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916 and 1917 and the defendant was notified by said Board of the amount so fixed and of said assessment.

Plaintiff states that immediately after finally fixing said value the said Board of Valuation and Assessment duly certified to the said Auditor of Public Accounts the value of said spirits so assessed for said year and the said Auditor duly certified to the Clerk of the Carroll County Court the amount liable for County, City,

171 Town and Taxing District Taxation on said spirits by the defendant for the year 1917 and the date when the bonded period would expire on said spirits. A duly attested copy of said certified report of the Auditor of Public Accounts of the State of Kentucky of the value of said spirits so assessed for the year 1917 duly certified to the Clerk of the Carroll County Court is filed herewith as part hereof marked "K1." The aforesaid certified report of the Auditor of Public Accounts to the Clerk of the Carroll County Court was duly filed by said Clerk in his office and said report was by him certified to the proper collecting officer of the City of Carrollton for collection.

Plaintiff states that the defendant, Jett Bros. Distilling Co., the owner and proprietor of bonded warehouses in which distilled spirits were stored situated in the City of Carrollton, Ky., did on the — day of January, 1917 make and transmit to the Auditor of Public Accounts of the State of Kentucky a statement subscribed and sworn to by J. F. Jett, Treasurer, of Jett Bros. Distilling Co., showing the quantity and kind of spirits that had been withdrawn from said warehouses during the four months next before the first day of January 1917, the years in which such spirits were assessed for County, City, Town and Taxing District Taxation and the County and City in which said warehouses were situated in which said spirits were stored at the time of said assessments. A duly attested copy of said statement is filed herewith as part hereof marked "G2." Plaintiff states that by said statement the defendant reported to the Auditor of Public Accounts that 27 packages of whiskey which had been in bond and stored in said warehouses since 1909 and 87 packages of whiskey which had been in bond and stored in said warehouses since 1910 and 183 packages of whiskey which had been in bond and stored in said warehouses since 1911 and 1348 packages of whiskey which had been in bond and stored in said warehouses since 1912 and 314 packages of whiskey which had been in bond and stored in said warehouses since 1913 and 13 packages of

172 whiskey which had been in bond and stored in said warehouses since 1914, had been removed and withdrawn from said warehouses during the four months next before the first day of January, 1917. Plaintiff states that said spirits had been stored in said warehouses in the City of Carrollton, Ky. during the times stated in said statement and that each of said packages contained one barrel of whiskey. Plaintiff states that the defendant failed to make and transmit to the Clerk of the Carroll County Court said statement as required by law but in lieu thereof defendant made a statement showing the quantity and kind of spirits that had been withdrawn and removed from said warehouses during the four months next before the first day of January, 1917, which corresponded to the statement made to the Auditor of Public Accounts, and which was addressed to the Sheriff of Carroll County, Ky. Plaintiff states that said statement made in lieu of the one required to be made to the Clerk of the Carroll County Court was filed in the office of the Clerk of the Carroll County Court and a duly attested copy of said statement is filed herewith as part hereof marked "G5." Plaintiff states

that all of said spirits reported withdrawn from said warehouses b defendant's said statements were duly assessed for taxation for the City of Carrollton, Ky. by the State Board of Valuation and Assessment for each of the years said spirits were stored in said warehouses at the value hereinbefore stated, to-wit: 1909 and 1910, $9.00 per barrel: for 1911 and 1912, $10.00 per barrel; for 1913, 1914, 1915, 1916, and 1917 at $12.00 per barrel.

Plaintiff states that by a resolution duly passed by the Board of Council of the City of Carrollton, Ky. on the 2nd. day of June, 1909 and by an ordinance of the City of Carrollton, Ky., entitled "An Ordinance Levying an Ad Valorem Tax for the year 1909 on all taxable property in the City of Carrollton, Ky. on April 1st, 173 1909 "duly passed by the Board of Council of the City of Carrollton, Ky. July 7th 1916, and on the 13th day of July 1916 published in the Carrollton News, a weekly newspaper published in the City of Carrollton, Ky., a tax for the year 1909 of seventy-five cents was duly levied on each one hundred dollars' worth of taxable property in the City of Carrollton, Ky., as same appears from the assessments and valuations made for said City for the year 1909. A duly attested copy of said resolution and said ordinance has been heretofore filed with the original petition herein marked "X3" and "Y3" respectively and same are now made a part hereof. Plaintiff states that by a resolution of the City of Carrollton, Ky., duly passed by the Board of Council of the City of Carrollton, Ky., on the 1st day of June 1910 and by an ordinance of said City entitled "An Ordinance Levying an Ad Valorem Tax for the year 1910 on all taxable property in the City of Carrollton, Ky. April 1st, 1910" duly passed and adopted by the Board of Council of the City of Carrollton, Ky. July 7th, 1916 and duly published in the Carrollton News, a weekly newspaper published in the City of Carrollton, Ky. on the 13th day of July 1916 a tax for the year 1910 of seventy-five cents was duly levied on each one hundred dollars' worth of taxable property in said City as same appears from the assessments and valuations made for said City for the year 1910. Duly attested copies of said resolution and said ordinance have been hereinbefore filed with the original petition herein marked "X4" and "Y4" respectively and same are now made part hereof. Plaintiff states that by a resolution of the City of Carrollton, Ky. duly passed by the Board of Council of the City of Carrollton, Ky. on the 7th day of June, 1911 and by an ordinance of said City entitled "An Ordinance Levying an Ad Valorem Tax for the year 1911 on all taxable property in the 4 City of Carrollton, Ky. on April 1st, 1911" duly passed and adopted by the Board of Council of the City of Carrollton, Ky. July 7th. 1916, and thereafter on the 13th day of July, 1916, published in the Carrollton News, a weekly newspaper published in the City of Carrollton, Ky., a tax for the year 1911 of seventy-five cents was duly levied on each one hundred dollars' worth of taxable property in said City as same appears from the assessments and valuations made for said City for the year 1911. Duly attested copies of said resolution and said ordinance have been hereinbefore filed with

the original petition herein marked "X5" and "Y5" respectively and same are now made a part hereof.

Plaintiff states that by an ordinance of the City of Carrollton, Ky. entitled "An Ordinance Levying an Ad Valorem Tax for the year 1912 on all taxable property in the City of Carrollton, Ky. April 1st, 1912" duly passed and adopted by the Board of Council of the City of Carrollton, Ky. April 4th, 1917, and thereafter published in the Carrollton News, a weekly newspaper published in the City of Carrollton, Ky. a tax for the year 1912 of seventy-five cents on each one hundred dollars' worth of taxable property as same appears from the assessments and valuations made for the year 1912 was duly levied for the year 1912. A duly attested copy of said ordinance has been hereinbefore filed with this amended petition marked "2X" and same is now made a part hereof.

Plaintiff states that by a resolution of said City duly passed by the Board of Council of the City of Carrollton, Ky. on the 18th. day of June 1913 and by an ordinance of said City entitled "An Ordinance Levying an Ad Valorem Tax for the year 1913 on all taxable property in the City of Carrollton, Ky., on April 1st, 1913" duly passed and adopted by the Board of Council of the City of Carrollton, Ky. July 7th, 1916, and on the 13th day of July, 1916 published in the Carrollton News, a weekly newspaper published in the City of Carrollton, Ky., a tax for the year 1913 of seventy-five cents was duly levied on each one hundred dollars' worth of taxable property in the City of Carrollton, Kentucky as same appears from the assessments and valuations made for said City for the year 1913. Duly attested copies of said resolution and said ordinance have been hereinbefore filed with the original petition herein marked "X7" and "Y7" respectively and same are now made part hereof.

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Plaintiff states that by a resolution of the City of Carrollton, Ky. duly passed by the Board of Council of said City on the 10th day of June, 1914, and by an ordinance of said City entitled "An Ordinance Lebying an Ad Valorem Tax for the year 1914 on all taxable property in the City of Carrollton, Ky. on April 1st, 1914" duly passed and adopted by the Board of Council of said City on the 7th day of July 1916, and on the 13th day of July, 1916 duly published in the Carrollton News, a weekly newspaper published in said City, a tax for the year 1914 of seventy-five cents was duly levied on each one hundred dollars' worth of taxable property as same appears from the assessments and valuations made for said City for the year 1914. Duly Attested copies of said resolution and said ordinance have been hereinbefore filed with the original petition herein marked "X8" and "Y8" respectively and same are now made part hereof.

Plaintiff states that by a resolution duly passed by the Board of Council of the City of Carrollton, Ky. on the 10th day of June, 1915 and by an ordinance of said City entitled "An Ordinance Levying an Ad Valorem Tax for the year 1915 on all taxable property in the City of Carrollton, Ky. on April 1st, 1915" duly passed and adopted by the Board of Council of said City on the 7th day of July, 1915 and on the 13th day of July, 1916 published in the Carrollton News, a weekly newspaper published

176 in said City, a tax for the year 1915 of seventy-five cents was duly levied on each one hundred dollars' worth of taxable property in said City as same appears from the assessments and valuations made for said City for the year 1912. Duly attested copies of said resolution and said ordinance have been hereinbefore filed with the original petition herein marked "X10" and "Y10" respectively and same are now made part hereof.

Plaintiff states that by an ordinance of the City of Carrollton, Ky., entitled "An Ordinance Lebying a Poll Tax on all Male Inhabitants over and above twenty-one yeats of age residing in the City of Carrollton, Ky., on the first day of April, 1916, and an Ad Valorem Tax on all Taxable property in the City of Carrollton, Ky., on April 1st, 1916, and providing the purposes for which said taxes shall be applied when collected" duly passed and adopted by the Board of Council of the City of Carrollton, Ky., on the 13th day of June, 1916, and thereafter published in the Carrollton News, a weekly newspaper published in said City a tax for the year 1916 of seventy-five cents was duly levied on each one hundred dollars' worth of taxable property in said City as same appears from the assessments and valuations made for said City for the year 1916. A duly attested copy of said ordinance has been hereinbefore filed with the original petition herein marked "XII" and same is now made part hereof.

Plaintiff states that by virtue of the resolutions and ordinances of the City of Carrollton, Ky., levying a tax for the years 1909, 1910, 1911, 1912, 1913, 1914, 1915 and 1916 and by virtue of the assessments made for said City for each of said years as set out in the original petition herein and by virtue of the ordinance of said City herein referred to and the defendant having the custody of said distilled spirits in its warehouses in the City of Carrollton, Ky., during all the times herein stated and by virtue of
177 said statements of whiskey withdrawn from said warehouses herein referred to, the defendant became indebted and liable to plaintiff and is now liable and indebted to plaintiff in the sum of $889.44 for taxes for the years 1909, 1910, 1911, 1912, 1913, 1914, 1915 and 1916, on said distilled spirits which had been removed and withdrawn from bond during the four months next before January 1st, 1917, and the further sum of $70.56 interest on said taxes for each of said years' assessment until January 1st, 1917, and the further sum of $57.86 eight per cent penalty on said delinquent taxes and the further sum of $12.05 interest from January 1st, 1917, until April 10th, 1917, on said taxes which were due January 1st, 1917, and are yet unpaid and interest from April 10th, 1917, on said taxes which became due January 1st, 1917, and are yet unpaid.

Plaintiff states that said taxes, interest and penalty are long past due and no part thereof has been paid except the sum of $236.64 which was paid on the 9th day of January, 1917, and that plaintiff is entitled to recover of the defendant the sum of $723.36 taxes for the years 1909, 1910, 1911, 1912, 1913, 1914, 1915 and 1916 on

180 *General Demurrer to Petition as Amended by the Amended and Supplemental Petition and Second Amended Petition.*

Carroll Circuit Court.

CITY OF CARROLLTON, Plaintiff,

vs.

JETT BROS. DISTILLING CO., Defendant.

The defendant, Jett Bros. Distilling Co., demurs generally to the petition as amended by the Amended and Supplemental petition and by the second amended petition, and to each paragraph of the same and for grounds says:

1st. That the same and no paragraph thereof contains allegations sufficient to constitute or support a cause of action against the defendant.

2nd. It further demurs to so much of the petition as amended and to each paragraph thereof as attempts to recover any interest prior to April 11th, 1917, that being the date upon which it is alleged that the demand was made upon defendant for payment of any part of plaintiff's claim.

3rd. It demurs to so much of said petition as amended and to each paragraph thereof as seeks to recover the alleged penalty of 20%, or any part thereof.

And for grounds says that the allegations of the petition in the particulars above referred to are not sufficient to constitute or support a cause of action.

WINSLOW & HOWE,
Attorneys for Deft.

Order.

Order in Court, April Term, 30th day of April, 1917.

Agreement.

It is agreed by the parties hereto through their counsel:

1. That the various Exhibits as finally filed and corrected up to and including the filing of the second amended petition are now correctly made and all denials as to their authenticity and
181 genuineness are withdrawn, but the legal effect of the facts stated in said exhibits is left for the determination of the court.

2. That all of the other material affirmative allegations of the petitions as amended by the Amended and Supplemental Petition and by the Second Amended Petition to such extent as the same changes or varies the allegations of the original petition, and to the extent that new matter is introduced but inclusive of credits given for payments made are now traversed of record.

3. That the affirmative allegations of the Amended Answer are

to be taken as and for the answer to the Amended and Supplemental Petition and to the second amended petition as fully as if set out in a formal answer thereto and all orders, demurrers, motions, objection and exceptions heretofore made and entered in regard to said Amended Answer are to be treated as if fully made to and concerning such formal answer to the original petition as now amended the purpose of this agreement being to prevent encumbering the record by unnecessary repetitions, but preserving to each party all his rights to have the questions of law raised or sought to be raised by the original petition as amended fairly determined between the parties.

4. It is further agreed that the only certification of the alleged assessments by the Clerk of the Carroll County Court to the Treasurer *of* Collecting officer of the City of Carrollton, are those made by Wm. Deatherage, County Clerk, referred to in questions and answers 8 and 19, 20 and 21 of the deposition of J. L. Donaldson, and that these certificates were all made and delivered on or about April 1st, 1916.

J. A. DONALDSON & SONS,
Attorneys for Plaintiff.
WINSLOW & HOWE,
Attorneys for Defendant.

182 *Order.*

Order in Court, April Term 30th day of April, 1917.

Judgment.

This action coming on for hearing and the Court, being advised, it is adjudged by the Court that the plaintiff, City of Carrollton, is entitled to recover of the defendant, Jett Bros. Distilling Co., the sum of $6,793.73, taxes for the years 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, and 1916 on distilled spirits withdrawn from defendant's bonded warehouses in the City of Carrollton, Ky., between the 1st day of May, 1911 and the 1st day of January, 1917 at the rate of seventy-five cents on each one hundred dollars' worth of said spirits as valued and assessed for each of said years during which it was in bond by the State Board of Valuation and Assessment, subject to the credit of the sum of $2,677.56, which is the total amount defendant paid plaintiff for taxes on distilled spirits during all of said years and the plaintiff is also entitled to recover of the defendant interest at the rate of six per cent per annum from April 11th, 1917 until paid on the sum of $4,116.17 which was the balance due plaintiff on April 11th, 1917 for taxes on whiskey withdrawn as aforesaid and that plaintiff is further entitled to recover of the defendant the further sum of $329.29 as a penalty of eight per cent on said $4,116.17, the net amount due plaintiff on April 11th, 1917 for taxes as aforesaid.

Therefore, it is adjudged by the Court that the plaintiff, City of Carrollton, recover of the defendant, Jett Bros. Distilling Co. the sum of $4,116.17 with interest thereon at the rate of 6% per annum from

April 11th, 1917 until paid and the further sum of $329.29 and its costs herein expended. To all of which the defendant excepts and prays an appeal to the Court of Appeals, which is granted and to so much of said judgment as fails to give interest on taxes prior to April 11th, 1917, and to so much thereof as fails to allow 20% penalty as per ordinance of the City of Carrollton, the plaintiff excepts and prays a cross appeal, which is granted.

183 *Deposition of Robt. L. Greene.*

Carroll Circuit Court.

CITY OF CARROLLTON, Plaintiff,

v.

JETT BROTHERS DISTILLING COMPANY, Defendant.

The Deposition of Robert L. Greene, Taken by Agreement at the Auditor's Office in Frankfort, Kentucky, April 20th, 1917, to be Read as Evidence on Behalf of Plaintiff in the Trial of the Above-styled Action.

Questioned by J. L. Donaldson, attorney for plaintiff:

Q. 1. Please state your name, age, residence and occupation, and what office, if any, you now hold.

A. Robert L. Greene, age 61 years, Auditor of Public Accounts of the State of Kentucky.

Q. 2. Please state whether or not as Auditor of Public Accounts of the State of Kentucky you are the custodian of the reports required by Section 4105 of the Kentucky Statutes to be made to the Auditor of Public Accounts by every owner or proprietor of bonded warehouses in which distilled spirits are stored between the first of September and October of each year.

A. I am the custodian of such reports.

Q. 3. Please state whether or not you have in your custody as Auditor of Public Accounts of the State of Kentucky, or there is on file in the office of Auditor of Public Accounts written statement made to the Auditor of Public Accounts for the State of Kentucky by the Defendant, Jett Brothers Distilling Company, between the first of September and first of October in each or any of the years
184 from 1906 to 1916 inclusive, which reports show the quantity and the kind of spirits in the warehouses of the said Distilling Company on the first of September in each of said years, the date when made, the county, city, town and taxing district in which said warehouses were situated, together with the statement as to what number of barrels of whiskey on which United States Government tax had been paid and the date of the expiration of the bonded period on that part of said spirits on which the United States Government tax had not been paid and the fair cash value thereof at a voluntary sale. And if any such reports are in your custody or on file in your

office, please state for what years such statements on file in your office were made?

A. I have such papers on file for each of said years.

Q. 4. Were each or any of said papers sworn to, and if so, by whom?

A. Each one of these statements appear to have been sworn to by J. F. Jett.

Q. 5. Please state in what capacity J. F. Jett swore to each of said statements.

Plaintiff objects as the writing will show for itself.

A. Some of these reports are sworn to by J. F. Jett as Superintendent and Treasurer, and some of them as Treasurer.

Q. 6. I hand you Exhibits referred to as Exhibits AS-BS-CS-DS-ES-FS-GS-HS-IS and K in the amended and supplemental petition in this action, and ask you to examine same and state whether or not they are true and correct copies filed by the defendants, Jett Brothers Distilling Company, with the Auditor of Public Accounts between the first day of September and the first day of October in the years 1906-1907-1908-1909-1910-1911-1912-1913-1914-1915 and 1916 respectively, showing the number of barrels of whiskey on hand
185 in their bonded warehouses in Carrollton, Kentucky, on the first day of September in each of said years?

A. These are correct copies of said reports as Exhibits marked as indicated above.

Q. 7. Please state whether or not as Auditor of Public Accounts of the State of Kentucky you are the custodian of the records of the State Board of Valuation and Assessment of the State of Kentucky?

A. I am.

Q. 8. Please prepare a copy and certify same as Auditor of Public Accounts of the State of Kentucky of the records of the State Board of Valuation and Assessment the statement for each of the years 1906 to 1917 inclusive which shows whether or not each of the reports or statements heretofore referred to for each of said years 1906 to 1916 inclusive made by the defendant, Jett Brothers Distilling Company, to the Auditor of Public Accounts of the State of Kentucky was submitted by the Auditor *fo* Public Accounts to the Board of Valuation and Assessment of Kentucky, and whether or not said Board fixed the value of said spirits and assessed same for the purpose of taxation for said *spirits and assessed same for the purpose of taxation for said* county, city, town and taxing district, for each of said years, and if so valued and so assessed for each of said years, also if it is shown whether or not said Board notified the defendant, Jett Brothers Distilling Company, of the value at which said whiskey was so valued and so assessed for each of said years, also if shown whether or not said Board certified to the Auditor of Public Accounts for the State of Kentucky the value of said spirits so valued and so assessed for each of said years, and please file same with your deposition as part thereof marked "Board of Valuation and Assessment."

186 A. I have had prepared copies of the action of the Board of Valuation and Assessment showing the value of distilled spirits in bond as of September 1st, 1905-1906-1907-1908-1909-1910-1911-1912-1913-1914-1915 and 1916.

Q. 9. Please state whether or not copies are made from the records of the State Board of Valuation and Assessment as on file in your office?

A. They are.

Q. 10. Please certify said copies and file same with your deposition as part hereof and marked "Board of Valuation and Assessment."

A. I file these copies with my deposition as part hereof, so certified and marked "Board of Valuation and Assessment."

Q. 11. I hand you the exhibits referred to in the amended and supplemental petition as Exhibits A8-B8-B9-B10-C8-C9-C10-D8-D9-D10-E8-E9-E10-F8-F9-F4 and G2, and ask you to please examine same and state whether or not each is a true and correct copy of the withdrawal report therein referred to?

A. I have examined the Exhibits referred to and find that they are correct copies of such reports except that of E8 and E10. The original reports have been lost or mislaid and I have been unable to find them, but from the recorded facts on the books of the office, I have been able to cover the facts in said reports and have certified these exhibits showing how they were made up.

Q. 12. Please state whether or not there is now on file in the Auditor's office a statement made by Jett Brothers Distilling Company to the Auditor of Public Accounts showing the quantity and kind of spirits that have been withdrawn from its warehouses during
187 the four months next before January 1st, 1914?

A. I have been unable to find such report on file in the office.

Q. 13. Please state whether or not such statement was ever filed in the office of the Auditor of Public Accounts for the State of Kentucky.

A. I am satisfied that such statement was filed because Exhibit D8 shows the number of Barrels of whiskey reported on September 1st, 1913, the list of whiskey remaining in bond September 1st, 1914, the whiskey withdrawn from bond on January 1st, 1914 to May 1st, 1914, from *Jay* 1st, 1914 to September 1st, 1914 and shows the table of barrels left in bond to be accounted for. Unless a report had been filed it would have been impossible to have had these figures on the books of the office. The records show that the total number withdrawn was 1129 barrels and the total tax and interest paid for withdrawals from May 1st, 1913 to January 1st, 1914 to be $272.10.

Q. 14. Please state, if you know, what has become of the original statements filed in this office?

A. I do not. Diligent search has been made for this report and it has not been found.

Q. 15. Please state whether or not Exhibit D8 heretofore referred to is made from a record of this office made from a report of Jett Brothers Distilling Company to the Auditor of Public Accounts.

A. I am sure it is.

Q. 16. Please state whether or not there is now on file in the office

of the Auditor of Public Accounts a statement of the Jett Brothers Distilling Company to the Auditor of Public Accounts showing the quantity and kind of Spirits that has been withdrawn from its warehouse during the four months next before September 1st, 1915?

A. I have been unable to find such a report.

188 Q. 17. Was there ever such statement filed in the office of Auditor of Public Accounts for the State of Kentucky?

A. I am sure that such a statement was filed because the results of such statement appear upon the books of the office of the Auditor.

Q. 18. Please state whether or not Exhibit E10 heretofore referred to is made from the records in the office of the Auditor of Public Accounts of the State of Kentucky showing the quantity and kind of spirits reported withdrawn from its warehouses by the defendant, Jett Brothers Distilling Company, during the four months next before September 1st, 1914, and also whiskey reported withdrawn by defendant during the four monyhs next before January 1st, 1915?

A. It is.

Q. 19. Please state whether or not the defendant, Jett Brothers Distilling Company paid the State of Kentucky taxes for each of the years 1906 to 1916 inclusive on the number of barrels reported from bond by the defendant by the statement referred to, and on the value and assessment thereof made by the State Board of Valuation and Assessment were for the years 1906 to 1916 inclusive?

A. Yes, these taxes appear to have been paid from the records of the Auditor's office and said reports so show.

Q. 20. Please state amount of taxes paid by defendant, Jett Brothers Distilling Company, to the State of Kentucky for the quarter ending January 1st, 1914, on whiskey reported withdrawn from its bonded warehouses during the four months next before September 1st, 1914?

Plaintiff objects.

A. $272.10.

Q. 21. Please state amount of taxes paid to the State of Kentucky by Jett Brothers Distilling Company on whiskey reported

189 withdrawn by the defendant during the four months next before September 1st, 1914?

A. $582.64.

Plaintiff objects.

Q. 22. Mr. Greene, is it not a fact that it is for two quarters, for the eight months preceeding January 1st, 1914?

A. Yes, that is true.

R. L. Greene, Cross-examination.

Cross-examination.

By Geo. B. Winslow, attorney for defendant:

Q. 1. Mr. Greene, when did you first take charge of the office of Auditor of Public Accounts of the State of Kentucky?

A. January 3rd, 1916.

Q. 2. Then the Exhibits D8 and E10, to which you have referred if filed at all in the office of Auditor of Public Accounts, were filed prior to the time you were connected with this office, were they not?

A. Yes, sir.

Q. 3. As a matter of fact you have no personal knowledge that they were filed?

A. I have not.

And further deponent saith not.

The signature of the witness is, by agreement of parties, waived.

190 *Depositions.*

Carroll Circuit Court.

CITY OF CARROLLTON, Plaintiff,

vs.

JETT BROS. DISTILLING CO., Defendant.

Deposition of H. R. Lorch.

The deposition of H. R. Lorch, taken at the office of Winslow & Howe, in Carrollton, Ky., April 17, 1917, by agreement to be read as evidence on behalf of plaintiff in the case of City of Carrollton v. Jett Bros. Distilling Co., now pending in the Carroll Circuit Court.

The witness being duly sworn testified as follows:

Direct examination.

By J. A. Donaldson, attorney for plaintiff:

Q. 1. State your age, residence and occupation or what office, if any, you hold in the City of Carrollton?

A. Age 31 years, H. R. Lorch, live on Ninth St., Carrollton, Ky. city clerk.

Q. 2. State for how long you have held the office of city clerk in the City of Carrollton, Ky.?

A. For five years, about five years.

Q. 3. State whether or not as clerk of the City of Carrollton, Ky. you have the custody of the records of the Board of Council of the City of Carrollton, Ky.?

A. I have.

Q. 4. I hand you Exhibit- X, X1, Y1, X2, X3, Y3, X4, Y4, X5, Y5, X6, X7, Y7, X8, Y9, X10, Y10, X11, and 2X filed with the petition and amended and supplemental petition in this action and will ask you to examine same and state whether or not you attested each or any of them as Clerk of the City of Carrollton, Ky.?

A. I did.

Q. 5. Please state whether or not each or any of said Exhibits are true and correct copies of the resolutions and ordinances therein referred to as same appears upon the records of the City of Carrollton, Ky.?

A. They are.

Q. 6. Please give the dates when each of the ordinances and resolutions, copies of which are filed with the petition and amended petition in this action, were passed by the Board of Council of the City of Carrollton, Ky., as same appears from the records of said council in your custody?

A. March 6, 1907——

Q. 7. Better give the description of the Exhibit first and then give date, say for instance, X2, and show the time, that is the better way.

A. Exhibit X, March 6, 1907; X1, June 5, 1907; Y1, July 7, 1916; X2, July 1, 1908; Y2, July 7, 1916; X3, June 2, 1909; Y3, July 7, 1916; X4, June 1, 1910; Y4, July 7, 1916; X5, June 7, 1911; Y5, July 7, 1916; X6, June 5, 1912; X7, June 18, 1913; Y7, July 7, 1916; X8, July 10, 1914; Y9, July 7, 1916; S10, June 10, 1915; Y10, July 7, 1916; X11, June 13, 1916; 2X, April 4, 1917.

Q. 8. Please state whether or not any or all of said ordinances were ever published and if so how and when?

A. They were published in both of the Carrollton papers and were published the 7th day of July, 1916.

Q. 9. What do you mean when you say published in both papers?

A. Carrollton News and Carrollton Democrat.

Q. 10. You don't mean to state that all the ordinances referred to were published in the first publication following July 7, 1916, do you, some of the ordinances were passed back in 1907?

A. The ordinance correcting the resolutions of 1907, 1908, 1909, 1910, 1911, 1913, 1914 and 1915, were published on that date.

Q. 11. When was the ordinance entitled "An Ordinance Levying an Ad Valorem Tax for the year 1912 on all taxable property in the City of Carrollton, Ky., as of April 1, 1912, published if you know?

A. It was published in the first publication of the Carrollton News and Democrat after April 4th, 1917.

Q. 12. State, if you know, where the bonded warehouses of Jett Bros. Distilling Co., of Carrollton, are located?

A. Situates on First and Seminary Streets in Carrollton, Kentucky.

Signature of witness waived.

No Cross-examination.

Deposition of Geo. S. Lee.

Also the deposition of GEORGE S. LEE, taken at the same time and place and for the same purpose as stated in the caption.

The witness being duly sworn, testified as follows:

Direct examination.

By J. A. Donaldson, attorney for plaintiff:

Q. 1. State your name, age, residence and occupation?

A. George S. Lee, my residence is Highland Ave., Carrollto Ky., age, attained my majority some time since, publisher or edito of the Carrollton News, Carrollton, Ky.

Q. 2. For how long have you been the publisher of the Carrollto News?

A. For twenty-five years past.

Q. 3. Please state where the Carrollton News is published and fo how long it has been so published?

A. Published in the City of Carrollton, Ky.

Q. 4. For how long?

A. Well, it's twenty-five years last February, 1892.

Q. 4. How often is it published?

A. Weekly.

Q. 5. Please state whether or not an ordinance of the City o Carrollton, Ky., entitled an ordinance for the purpose of conformin the government of the City of Carrollton to the law applicable t cities of the Fourth Class was ever published in the Carrollton New and if so, when?

193 A. In the issue of March 21st, 1907.

Q. 6. Please state whether or not an ordinance of the City of Carrollton, Ky., entitled an ordinance levying an ad valorem ta for the year 1907 on all taxable property in the City of Carrollto Ky., April 1, 1917, was ever published in the Carrollton News, and if so, when?

A. It was published in the issue of July 13th, 1916.

Q. 7. In the issue of what?

A. Issue of the Carrollton News, July 13, 1916.

Q. 8. Please state whether or not an ordinance of the City o Carrollton, Ky., entitled an ordinance levying an ad valorem tax fo the year 1908 on all taxable property in the City of Carrollton, Ky. April 1, 1908, was ever published in the Carrollton News, and if so when?

A. What was the title of it?

Q. 9. An Ordinance levying an ad valorem tax for the year 1908?

A. It was published in the issue of the Carrollton News, July 13, 1916.

Q. 10. Please state whether or not an ordinance of the City of Carrollton entitled an ordinance levying an ad valorem tax for the year 1909 on all taxable property in the City of Carrollton, Ky., April 1, 1909, was ever published in the Carrollton News and if so when?

A. It was published in the issue of the Carrollton News, of July 13th, 1916.

Q. 11. Please state whether or not an ordinance of the City of Carrollton, entitled an ordinance levying an ad valorem tax for the year 1910 on all taxable property in the City of Carrollton, Ky.

April 1, 1910, was ever published in the Carrollton News, and if so, when?

A. It was published in the Carrollton News, of July 13, 1916.

Q. 12. Please state whether or not an ordinance of the City of Carrollton, Ky., entitled an ordinance levying an ad valorem
194 tax for the year 1911 on all taxable property in the City of Carrollton, Ky., April 1, 1911, was ever published in the Carrollton News, and if so, when?

A. It was published in the issue of the Carrollton News, of July 13th, 1916.

Q. 13. Please state whether or not an ordinance of the City of Carrollton, Ky., entitled an ordinance levying an ad valorem tax for the year 1912 on all taxable property in the City of Carrollton, Ky., April 1, 1912, was ever published in the Carrollton News, and if so when?

A. Published in the Carrollton News of April 12, 1917.

Q. 14. Please state whether or not an ordinance of the City of Carrollton, Ky., entitled an ordinance levying an ad valorem tax for the year 1913 on all taxable property in the City of Carrollton, Ky., April 1, 1913, was ever published in the Carrollton News?

A. It was published in the issue of July 13, 1916.

Q. 15. Please state whether or not an ordinance of the City of Carrollton, Ky., entitled an ordinance levying an ad valorem tax for the year 1914 on all taxable property in the City of Carrollton, Ky., April 1, 1914, was ever published in the Carrollton News, and if so when?

A. It was published in the issue of the Carrollton News, July 13th, 1916.

Q. 16. Please state whether or not an ordinance entitled an ordinance levying an ad valorem tax for the year 1915 on all taxable property in the city of Carrollton, Ky., April 1, 1915, was ever published in the Carrollton News?

A. It was published in the Carrollton News in the issue of July 13, 1916.

Q. 17. Please state whether or not an ordinance entitled an ordinance levying a poll tax on all male inhabitants over twenty-one years of age residing in the City of Carrollton, Ky., on the first day of April, 1916, and an ad valorem tax on all taxable property in the City of Carrollton, Ky., on the first day of April, 1917, and
195 providing the purposes for which said taxes shall be applied, was ever published in the Carrollton News?

A. It was published in the Carrollton News of the issue of June 5th, 1916.

Q. 18. Please file with your deposition copies of the Carrollton News showing the publications of the ordinance referred to in questions 6, 8, 10, 11, 12, 13, 14, 15, 16, and 17 and make the same as part of your deposition, marking them Exhibit- 1, 2, 3, and 4?

A. I file them and so mark them.

Signature of witness waived.

No Cross Examination.

Deposition of J. L. Donaldson.

Also the deposition of J. L. DONALDSON, taken at the same time and place and for the same purpose as stated in the caption.

The witness being duly sworn testified as follows:

Direct examination.

By J. A. Donaldson, attorney for plaintiff:

Q. 1. State your age, residence and what office, if any, you held in the City of Carrollton during the years 1916 and 1917?

A. 26 years old, Carrollton, Ky., Treasurer of the City of Carrollton, Ky.

Q. 2. State whether or not as Treasurer of the City of Carrollton, Ky., you have anything to do with the collection of taxes due the City of Carrollton, Ky.?

A. As Treasurer of the City of Carrollton, I am collector of taxes for said City.

Q. 3. State whether or not you are one of the firm of J. A. Donaldson & Sons, attorneys at law in Carrollton, Ky.?

A. I am.

Q. 4. State whether or not you made any demand of Jett Bros. Distilling Co., for the taxes due the City of Carrollton, Ky., during the year 1917, if so, what demand did you make, and for how much and for what item, if you have the
196 writing file the writing as a part of your deposition marked Exhibit X. D.?

A. As Treasurer and collector of taxes for the City of Carrollton, Ky., also as one of the attorneys for said City, I *am*de demand of the defendant, Jett Bros. Distilling Co., on April 11, 1917, for the payment of certain sums for taxes, interest and penalties to the City of Carrollton, Ky., on whiskey withdrawn from bond, during the years 1907 to 1917 inclusive, and I file with my deposition Exhibit X. D., which is a copy of the papers which I delivered to the defendant, Jett Bros. Distilling Co., containing the sums demanded on said date.

To Jett Bros. Distilling Co., Carrollton, Ky.:

As Treasurer and Collector of taxes for the City of Carrollton, Ky., and as one of the Attorneys for the City of Carrollton, Ky., I hereby make demand of Jett Bros. Distilling Company for the payment of the following sums for taxes, interest and penalties due the City of Carrollton, Kentucky, on whiskey withdrawn from bond during the time herein stated to-wit:

1911.			
Sept.	1.	To taxes due on whiskey withdrawn from bond during the four months preceeding Sept. 1st, 1911.....	$266.09
Sept.	1.	To interest until Sept. 1st, 1911 on taxes due to Sept. 1st, 1911 as aforesaid....	23.52
Sept.	16.	To 8% penalty on taxes which became due Sept. 1st, 1911.....	21.28
Nov.		To 20% penalty on taxes which became due Sept. 1, 1911	53.21
1912.			
Jan.	1.	To taxes due on whiskey withdrawn from bond during the four months preceeding Jan 1st, 1912.....	375.38
197			
Jan.	1.	To interest until Jan. 1st, 1912 on taxes due Jan. 1st, 1912 as aforesaid.....	28.27
Jan.	16.	To 8% penalty on taxes which became due Jan. 1st, 1912	30.03
November	2nd.	To 20% penalty on taxes which became due Jan. 1, 1912.....	75.07
May	1.	To taxes due on whiskey withdrawn from bond during the four months preceeding May 1st, 1912.....	286.32
May	1.	To interest until May 1st, 1912 on taxes due May 1st, 1912 as aforesaid.....	22.17
May	16.	To 8% penalty on taxes which became due May 1st, 1912	22.90
Nov.	2nd.	To 20% penalty on taxes which became due May 1st, 1912.....	57.28
Sept.	1.	To taxes due on whiskey withdrawn from bond during the four months preceeding Sept. 1st, 1912	222.94
Sept.	1.	To interest until Sept. 1st, 1912 on taxes which became due Sept. 1st, 1912 as aforesaid	12.87
Sept.	16.	To 8% penalty on taxes which became due Sept. 1st, 1912.....	17.83
Nov.	2nd.	To 20% penalty taxes which became due Sept. 1, 1912.....	44.58
1913.			
Jan.	1st.	To taxes due on whiskey withdrawn from bond during the four months preceeding Jan. 1st, 1913.....	251.14
Jan.	1st.	To interest until Jan. 1st, 1912 on taxes which became due Jan. 1st, 1913 as aforesaid	18.93

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Jan.	16.	To 8% penalty on taxes which became due Jan. 1st, 1913	20.09
Nov.	2nd.	To 20% penalty on taxes which became due Jan. 1st, 1913	50.22
May	1st.	To taxes due on whiskey withdrawn from bond during the four months preceeding May 1st, 1913	176.44
May	1st.	To interest until May 1st, 1913 on taxes which became due May 1st, 1913 as aforesaid	14.55
May	16.	To 8% penalty on taxes which became due May 1st, 1913	14.11
Nov.	2nd.	To 20% penalty on taxes which became due May 1st, 1913	35.28
Sept.	1.	To taxes on whiskey withdrawn from bond during the four months preceeding Sept. 1st, 1913	306.10
Sept.	1.	To interest until Sept. 1st, 1913 on taxes which became due Sept. 1st, 1913 as aforesaid	25.72
Sept.	16.	To 8% penalty on taxes which became due Sept. 1, 1913	24.48
Nov.	2nd.	To 20% penalty on taxes which became due Sept. 1st, 1913	61.22
1914.			
Jan.	1.	To taxes due on whiskey withdrawn from bond during the four months preceeding Jan. 1st, 1914	385.60
Jan.	1.	To interest until Jan. 1st, 1914 on taxes which became due Jan. 1st, 1914 as aforesaid	22.43
Jan.	16.	To 8% penalty on taxes which became due Jan. 1st, 1914	30.84
Nov.	2nd.	To 20% penalty on taxes which became due Jan. 1st, 1914	77.12
		Carried	2,874.06

			Cr.	Dbt.
199		Brought forward		2,874.06
1914.				
May	1st.	To taxes due on whiskey withdrawn from bond during the four months preceeding May 1st 1914		306.04

			Cr.	Dbt.
May	1st.	To interest until May 1st, 1914 on taxes which became due May 1st, 1914 as aforesaid	.....	20.68
May	16th.	To 8% penalty on taxes which became due May 1st, 1914.....	.....	24.48
Nov.	2nd.	To 20% penalty on taxes which became due May 1st, 1914.....	.....	61.20
Sept.	1st.	To taxes due on whiskey withdrawn from bond during the four months preceeding Sept. 1st, 1914	.....	291.52
Sept.	1.	To interest until Sept. 1, on taxes which became due Sept. 1st, 1914 as aforesaid	.....	21.88
Sept.	16.	To 8% penalty on taxes which became due Sept. 1, 1914.....	.....	23.31
Nov.	2.	To 20% penalty on taxes which became due Sept. 1, 1914.....	.....	58.30
1915.				
Jan.	1.	To taxes due on whiskey withdrawn from bond during the four months preceeding Jan. 1st, 1915	.....	459.58
Jan.	1.	To interest until Jan. 1st, 1915, on taxes which became due Jan 1st, 1915 as aforesaid.....	.....	26.19
Jan.	16.	To 8% penalty on taxes which became due Jan. 1st, 1915.....	.....	36.76
Nov.	2nd.	To 20% penalty on taxes which became due Jan. 1st, 1915.....	.....	91.91
200				
May	1st.	To taxes due on whiskey withdrawn from bond during the four months preceeding May 1st 1915	.....	430.90
May	1st.	To interest until May 1st, 1915 on taxes which became due May 1st, 1915 as aforesaid.....	.....	29.44
May	16.	To 8% penalty on taxes which became due May 1st, 1915.....	.....	34.47
Nov.	1st.	To 20% penalty on taxes which became due May 1st, 1915.....	.....	86.18
Sept.	1.	To taxes due on whiskey withdrawn from bond during the four months preceeding Sept. 1, 1915	.....	358.95
Sept.	1.	To interest until Sept. 1, on taxes which became due Sept. 1, 1915	.....	27.23

			Cr.	Dbt.
Sept.	10.	By amt. paid City Treasurer.....	62.34	
Sept.	16.	To 8% penalty on taxes which became due Sept. 1, 1915 and unpaid on this date.....	.....	26.18
Nov.	2.	To 20% penalty on taxes which became due Sept. 1, 1915 and unpaid on this date.....	.....	64.96
1916.				
Jan.	1st.	To taxes due on whiskey withdrawn from bond during the four months preceeding Jans. 1st, 1916	.....	613.81
Jan.	1st.	To interest until Jan. 1st, 1916 on taxes which became due Jan. 1st, 1916 as aforesaid	.....	43.29
Jan.	10.	By amt. paid City Treasurer.....	87.84	
Jan.	16.	To 8% penalty on taxes which became due Jan. 1st, 1916 and were unpaid on this date.....	.....	45.54
Nov.	2.	To 20% penalty on taxes which became due Jan. 1, 1916 and were unpaid on this date.....	.....	113.85
201				
May	1.	To taxes due on whiskey withdrawn from bond during the four months preceeding May 1st, 1916	.....	562.11
May	1.	To interest until May 1st, 1916 on taxes which became due May 1st, 1916 as aforesaid.....	.....	43.69
May	6.	By Amt. paid City Treasurer.....	85.62	
May	16.	To 8% penalty on taxes which became due May 1st, 1916 and were unpaid on this date.....	.....	41.54
Nov.	2.	To 20% penalty on taxes which became due May 1, 1916 and were unpaid on this date.....	.....	103.85
Sept.	1.	To taxes due on whiskey withdrawn from bond during the four months preceeding Sept. 1, 1916	.....	611.37
Sept.	1.	To interest until Sept. 1, 1916 on taxes which became due Sept. 1, 1916 as aforesaid.....	.....	48.29
Sept.	9.	By Amt. paid City Treasurer.....	180.96	
Sept.	16.	To 8% penalty on taxes which became due Sept. 1, 1916 and were unpaid on this date.....	.....	38.29

			Cr.	Dbt.
Nov.	2.	To 20% penalty on taxes which became due Sept. 1, 1916 and were unpaid on this date.....	.....	95.72
		Carried	417.66	7,715.50
		Brought forward.....	417.66	7,715.50
1917.				
Jan.	1.	To taxes due on whiskey withdrawn from bond during four months preceeding Jan. 1, 1917	.....	889.44
Jan.	1.	To interest until Jan. 1, 1917 on taxes which became due Jan 1st, 1917 as aforesaid.....	.....	70.56
Jan.	9.	By amt. paid City Treasurer:....	236.64	
Jan.	16.	To 8% penalty on taxes which became due Jan. 1, 1917 and were unpaid on this date.....	.....	57.86
April	10.	To interest on taxes and interest which became due Sept. 1, 1911 until this date	.....	97.45
April	10.	To interest to date on taxes and interest which became due Jan. 1, 1912	.....	127.77
April	10.	To interest to date on taxes and interest which became due May 1st, 1912	.....	91.52
April	10.	To interest to date on taxes and interest which became due Sept. 1, 1912	.....	64.41
April	10.	To interest to date on taxes and interest which became due Jan. 1, 1913	.....	69.30
April	10.	To interest to date on taxes and interest which became due May 1st, 1913	.....	45.20
April	10.	To interest to date on taxes and interest which became due Sept. 1, 1913	.....	71.90
April	10.	To interest to date on taxes and interest which became due Jan. 1, 1914	.....	80.25
April	10.	To interest to date on taxes and interest which became due May 1, 1914	.....	58.39
April	10.	To interest to date on taxes and interest which became due Sept. 1, 1914	.....	49.07

			Cr.	Dbt.
April	10.	To interest to date on taxes and interest which became due Jan. 1, 1915	.....	66.3
April	10.	To interest to date on taxes and interest which became due May 1st, 1915	.....	53.7
April	10.	To interest to date on balance due on taxes and interest which became due Sept. 1, 1915	.....	32.6
April	10.	To interest which became due Jan. 1, 1916	.....	43.6
April	10.	To interest to date on balance due on taxes and interest which became due May 1, 1916	.....	29.4
April	10.	To interest to date on balance due on taxes and interest which became due Sept. 1, 1916	.....	17.5
203				
Apr.	10.	To interest to date on balance due on taxes and interest which became due January 1, 1917	.....	12.0
April	10.	Balance due City of Carrollton	9,089.67	
			9,743.97	9,743.9

J. L. DONALDSON,
Treasurer and Collector of Taxes
for the City of Carrollton, Ky.

Q. 5. In making said demand from said company to whom di you deliver said paper and from whom did you make that demand?

A. I delivered said papers and made demand of said compan through J. F. Jett as Treasurer and chief officer of the defendant Jett Bros. Distilling Co.

Q. 6. Was there any mistake made in the total taxes due in thi statement and if so what mistake was made?

A. Yes, a mistake of the sum of $200 was made in the footing contained on the first page, which was carried through the secon on to the third page making the balance due said city on April 10t as stated in said Exhibit $200 less than the real amount due.

Q. 7. How was that mistake made?

A. Mistake was made in the addition of the amount due as stated on the first page.

Q. 8. Were the items set forth on that paper correct as you under stand them?

A. All of the items are correct with the exception of one, that i the balance due the city of Carrollton, April 10, 1917, for as stated on said paper it is $9,089.67, when in fact it should be $9,289.67.

Q. 8. State whether or not any copy or copies of the valua-
204 tion of spirits as fixed by the State Board of Valuation of Kentucky and certified to the clerk of the Carroll County Court for liability for taxes for local taxes and subject to county, City, Town and district taxes for Carroll County, Ky., were given to you by the Clerk of the Carroll County Court for the years named in plaintiff's petition and referred to in plaintiff's petition in this action, and if so, please file copies of said reports and make them a part of your deposition?

A. In accordance with section 4108 of Ky. Statutes, the Clerk of the Carroll County Court certified to me as Treasurer of the City of Carrollton, Ky., the value of spirits stored in the warehouses of Jett Bros. Distilling Co., in Carrollton, Ky., and assessed by the State Board of Valuation and Assessments for the years 1906, 1908, 1909, 1911, 1912, 1913, 1914, 1915 and 1916, and I file, herewith as a part of my deposition, the original certificate of the Clerk of the Carroll County Court to me as City Treasurer of the value so fixed by the State Board of Valuation and Assessment as certified to him by the State Auditor for each of said years, also containing the number of barrels of whiskey assessed by the State Board of Valuation and Assessment for each of said years, marked 1, 2, 3, 4, 5, 6, 7, 8, and 9, J. L. D., respectively.

Q. 9. I notice that one of said certificates certifies that "certified to me by the State Auditor of date Dec. 18, 1908 is as follows, to-wit; For the year ending September 1909." Is that for 1909?

A. It is for the year 1908. Contains the valuation of whiskey fixed for the year ending Sept. 1, 1908, although certified to me by the Clerk of the Carroll Count- Court, it contains the words for year Sept. 1. 1909.

Q. 10. How do you come to the conclusion that it is 1908 instead of 1909, as stated in that certificate?

A. The certificate in part reads as follows "fixed by the State Board of Valuation and Assessment and certified to me by
205 the State Auditor of date Dec. 18, 1908 is as follows to-wit: for the year ending September 1st, 1909" since the value fixed was certified to the Clerk by the State Auditor on December 18, 1908, it could not have been for the year ending September 1, 1909.

Q. 11. Then that is a typographical error, and is not for the year ending Sept. 1, 1909?

A. Yes, sir, it is an error and should be 1908.

Q. 12. Have you one for the year 1909?

A. I have, and file it herewith marked 3 J. L. D.

Q. 13. Have you one for the year 1910?

A. I have not.

Q. 14. Do you know why it is there was no certificate for the year 1910?

A. There was none filed in the office of the Clerk of the Carroll County Court at present.

Q. 15. Have you any for the year 1907?

A. I have not.

Q. 16. Why not?

A. The original certificate of the Auditor to the Clerk of the Carroll County Court has either been misplaced or destroyed, hence the Clerk is unable to certify to me as Treasurer.

Q. 17. As Treasurer of the City of Carrollton are you collecting officer for the City of Carrollton?

A. I am collector of taxes for the City of Carrollton.

Q. 18. On what dates were the certificates to you as Treasurer of the City of Carrollton certified?

A. On all of said certificates, with the exception of one, fixing the value of whiskey for the year ending September 1, 1916, were certified to me as Treasurer by the Clerk of the Carroll County Court sometime in the year 1916 prior to August 1, 1916. The one fixing the valuation for the year ending September 1, 1916, was certified to me as Treasurer of the City of Carrollton, Ky. by the Clerk of the Carroll County Court on December 15, 1916.

206 Cross-examination.

By G. B. Winslow, attorney for defendant:

Q. 19. So far as you know was there ever any certificate by the Clerk of the Carroll County Court to the Treasurer of the City of Carrollton, other than those which were made to you and which you have filed as a part of your deposition?

A. I know of no others.

Q. 20. Isn't it a fact that the certificates were made after the passage and publication of the ordinances referred to in the depositions of Lorch and Lee and which were passed and published on or about the 7th day of July 1916?

A. No, sir, in fact I think they were certified to me sometime prior to the April term of the Carroll Circuit Court.

Q. 21. 1916?

A. Yes, sir.

Q. 22. You have referred in your deposition to having made demand from Mr. J. F. Jett, as Treasurer of the Jett Bros. Distilling Co., for certain taxes on or about the 11th day of April, 1917, did you in fact as Treasurer of the City make any demand upon Mr. Jett for the payment of taxes, interest or penalties prior to that date?

A. No, sir.

A. 23. Then as a matter of fact demanded had not been made by you as Treasurer of the City of Carrollton upon the defendant for any part of the claim sued on prior to the institution of suit?

A. No, sir, did not think any demand was necessary.

Signature of witness waived.

Deposition of W. C. Darling.

Also the deposition of W. C. DARLING taken at the same time and place and for the same purpose as stated in the caption. The witness being duly sworn testifies as follows, to wit.

Direct examination.

By J. L. Donalson, attorney for plaintiff:

Q. 1. Please state your name, age, residence and occupation?

207 A. W. C. Darling, Carrollton, Ky., 67 years, I suppose bookkeeper.

Q. 2. State what connection, if any, you have with Jett Bros. Distilling Co.?

A. I am employed by Jett Bros. Distilling Co.

Q. 3. In what capacity do you work for Jett Bros. Distilling Co.?

A. I am superintendent of the office work and bookkeeper.

Q. 4. Please state, if you know, what sums, if any, were paid the Sheriff or Collector of taxes for Carroll County, Ky. by Jett Bros. Distilling Co., for taxes due Carroll County, Ky., during each of the months, January, May and September, 1911; January, May and September, 1912; January, May and September, 1913; January, May and September, 1914; January, May and September 1915; and January, May and September 1916, also in January 1917, on withdrawals of whiskey?

By Mr. Winslow: To which defendant objects.

A. Well, I have made up here for each quarter ending September 1, 1911, and this takes down to January 1, 1917, and it about covers the question, the only thing my statements is from the quarter ending September 1, 1911 to the quarter ending January 1, 1917, which reads as follows, to-wit;

Carrollton, Ky., April 17, 1917.

"County taxes including interest paid by Jett Bros. Distilling Co., are as follows:

Quarter ending	Sept.	1,	1911	$229.45
" "	Jan.	1,	1912	288.43
" "	May	1,	1912	218.77
" "	Sept.	1,	1912	176.16
" "	Jan.	1,	1913	184.20
" "	May	1,	1913	130.00
" "	Sept.	1,	1913	219.53

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Quarter ending	Jan.	1,	1914	272.10
" "	May	1,	1914	217.82
" "	Sept.	1,	1914	208.94
" "	Jan.	1,	1915	333.85
" "	May	1,	1915	306.90
" "	Sept.	1,	1915	258.79
" "	Jan.	1,	1916	438.40
" "	May	1,	1916	403.87
" "	Sept.	1,	1916	407.58
" "	Jan.	1,	1917	640.00

Q. 5. State whether or not you drew the checks, if checks were drawn for said amounts and made payments as stated in your answer to the preceeding question?

By Mr. Winslow: To which the defendant objects.

A. Yes, I made the checks for those payments.

Q. 6. In what capacity were you acting when you paid said amounts?

A. I was acting as superintendent of the office with the authority to draw the checks.

Q. 7. Please state, if you know, what was the levy of Carroll County, Ky. for each of the years from 1911 to 1916, inclusive?

By Mr. Winslow: To which defendant objects.

A. Well, I think it was 50¢ on the dollar, you mean the levy rate think that has been the rate for a good while.

Q. 8. Please state whether or not the taxes due the State of Kentucky on the withdrawal reports for the quarters ending September 1, 1911, January 1, 1912, May 1, 1912 and September 1, 1912; January 1, 1913, May 1, 1913, and September 1, 1913; January 1, 1914, May 1, 1914, and Sept. 1, 1914; January 1, 1915, May 1, 1915 and September 1, 1915; January 1, 1916, May 1, 1916 and September 1, 1916 and January 1, 1917 were paid the State of Kentucky?

209 By Mr. Winslow: To which defendant objects.

A. Yes, sir.

Q. 9. State where the bonded warehouses of Jett Bros. Distilling Co. were located?

A. Located in the City of Carrollton, Ky., on the Kentucky river, on Seminary and First Streets.

Q. 10. How long have they been situated there?

A. Well, they have been improved some since the original plant was built.

Q. 11. Well, for about how long?

A. Well, I think since 1882, I believe 1883, they commenced operating.

Q. 12. Do you know whether any bonded houses were built at that time?

A. Not quite sure but some have been put in and have been there for at least 25 years.

Q. 13. Please state whether or not in all warehouse reports of withdrawals, filed by Jett Bros. Distilling Co., with the Auditor of Public Accounts of the State of Kentucky, between September 1, 1911 and January 15, 1917, was contained in the bonded warehouses at Jett Bros. Distilling Co. situated in the City of Carrollton, Ky.?

A. Yes, sir.

Signature of witness is waived.

No Cross Examination.

And afterwards, to-wit, on the 10th day of May, 1917, a Supersedeas Bond was executed, herein, and is in words and figures as follows, to wit:

Supersedeas Bond.

JETT BROS. DISTILLING CO., Appellant,

vs.

CITY OF CARROLLTON, Appellee.

Upon an Appeal from a Judgment of the Carroll Circuit Court, Rendered 30th Day of April, 1917.

Whereas, said Appeallant, Jett Bros. Distilling Co., — an appeal from the judgment of the Carroll Circuit Court, rendered at
210 its April Term, 1917, against appellant in favor of the appellee for the sum of $4,116.17 with interest from April 11th, 1917, and the further sum of $329.29, and its costs therein expended and the Appellant desires to supersede the said judgment above mentioned:

Now, we, Jett Bros. Distilling Co., as principal and J. S. Jett, as surety, do hereby covenant to and with the Appellee the City of Carrollton, that the Appellant will pay to the Appellee, all costs and damages that may be adjudged against the Appellant on the appeal, and also that they will satisfy and perform the said Judgment above stated, in case it shall be affirmed, and any Judgment or Order which the Court of Appeals may render, or order to be rendered by the inferior Court, not exceeding in amount or value the Judgment aforesaid. (And also pay all rents, hire or damage, which during the pendency of the Appeal, may accru- on any part of the property of which the Appellee is kept out of possession, by reason of the Appeal.)

Witness our hands, this 10th day of May, 1917.

JETT BROS. DISTILLING CO.,
By GEO. B. WINSLOW, *Attorney.*
J. S. JETT.

Attest:
J. G. GINN, *C. C. C. C.*

And on the same day a Supersedeas was issued upon the foregoing bond and delivered to the Sheriff of Carroll County, and was by him duly executed and returned to this office.

The Supersedeas, issued herein, is lost or misplaced and cannot be found among the papers.

And, afterwards, to-wit: on July Rule Day, Second Day of July, 1917, the following order was made:

211 *Order.—Filing Schedule and Agreement.*

Came the parties, by their attorneys, and filed Schedule and Agre ment in regard thereto.

Said Agreement is in words and figures as follows, to-wit:

Schedule and Agreement.

Carroll Circuit Court.

CITY OF CARROLLTON, Plaintiff,

vs.

JETT BROS. DISTILLING CO., Defendant.

Schedule and Agreement in Regard Thereto.

The parties to this action, together with their respective counse realizing that the copying of the various exhibits filed with the plea ings and proof herein would cause great and unnecessary cost an delay, (some of them being immaterial for the purposes of the ap peal and some of them being extremely difficult to copy) it is ther fore now agreed by the parties through their undersigned counsel.

(1) That none of said Exhibits (either with the pleadings proof) are to be copied in the transcript except the account filed a part of answer 4 with the deposition of J. L. Donaldson.

(2) That if at any time prior to the final decision of the appea counsel for either party or any of the Appellate Judges considerin the case, shall deem that it is reasonably necessary for said Exhibi or any of them to be filed in the Court of Appeals, then the Court o its own motion or on motion of either party is hereby requested t issue a "subpœna duces tecum" for said Exhibits or any of them.

(3) It is further agreed that the answer herein (consisting of 8 pages) contains (*a*) a traverse of all the material allegations o the petition (said denials being embraced in the first sixtee
212 paragraphs and covering 74 pages thereof); (*b*) that th remaining paragraphs of said answer, to-wit, Nos. 17 to 2 were withdrawn and other allegations made in lieu thereof in th amended answer.

Hence, in order to avoid the unnecessary cost and delay in copy ing same, it is agreed that the original answer need not be copie in the transcript, and that the defense as made was and is a traver of the allegations of the petition as amended, together with th affirmative defenses set out in the amended answer, and may be s treated in the Court of Appeals (and for the information and con venience of the Court of Appeals the Clerk of the Carroll Circui Court shall copy this agreement at the place in the transcript wher the answer would otherwise appear.

(4) Each party reserves the right to file or cause to be filed an additional transcript of any omitted part of the record if deemed necessary at any time prior to the final disposition of the case in the Court of Appeals.

(5) Under the foregoing conditions and agreements Jett Bros. Distilling Co. (defendant-appellant herein) now orders the Clerk of the Carroll Circuit Court to make a complete transcript of the record in this case, except as herein agreed to be omitted, and the plaintiff-appelle-, the City of Carrollton waives notice of the filing of the schedule herein.

Witness our hands at Carrollton, Ky., this June 25th, 1917.

WINSLOW & HOWE,
Attorneys for Defendant-appellant.
J. A. DONALDSON & SONS,
Attorneys for Plaintiff-appellee.

State of Kentucky, Carroll County.

213 *Certificate.*

STATE OF KENTUCKY,
Carroll County:

I, J. G. Ginn, Clerk of the Circuit Court for the County and State aforesaid, do hereby certify that the foregoing — pages and this page contain a true and correct transcript of the record in the case wherein City of Carrollton is plaintiff and Jett Bros. Distilling Co., is the defendant, as ordered by the Schedule and Agreement filed herein, as the same appears of record and remains now on file in my office.

Witness my hand as Clerk of the Carroll Circuit Court, this the 24th day of July, 1917.

J. G. GINN,
Clerk Carroll Circuit Court.

Fee for this transcript including carbon copy $95.00.
J. G. GINN, *C. C. C. C.*

214 On the 21st day of December, 1917, the court entered the following judgment:

JETT BROS. DISTILLING COMPANY, Appellant,

vs.

CITY OF CARROLLTON, Appellee.

Appeal from the Judgment of the Carroll Circuit Court.

The Court being sufficiently advised it seems to them the judgment herein is erroneous in part. It is therefore considered that so

much of said judgment as awards 8% penalty is reversed and cause remanded with directions to proceed in accordance with opinion. The remainder of the judgment is affirmed. It is further adjudged that the Appellee recover of Appellant 10% damages on so much of the judgment as is affirmed. Which is ordered certified to said court.

Upon said judgment the Court entered the following opinion:

215 Kentucky Court of Appeals, December 21st, 1917.

JETT BROS. DISTILLING CO., Appellant,

v.

CITY OF CARROLLTON, Appellee.

Appeal from Carroll Circuit Court.

Opinion of the Court by Judge SAMPSON, affirming:

Carrollton is a city of the Fourth class. The appellant, Jetts Bros. Distilling Company, is a corporation, owning and operating a distillery and a bonded warehouse within the city limits of Carrollton. For the years, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915 and 1916, a large quantity of spirituous liquors were stored in the warehouse of appellant in said City. During those years the city of Carrollton levied an ad valorem tax upon all personal property within its limits. In assessing the property *personal property within its limits. In assessing the property* of individuals and corporations the Assessor of Carrollton undertook to and did list for taxation the distilled spirits in said bonded warehouse, and thereafter the Distilling Company paid the taxes to the said City, based upon the said City assessment.

216 Thus suit was instituted by the city against the Distilling company to recover a balance due as taxes upon the distilled spirits in the warehouse for the years named, under Sections 4105 to and including 4114 Kentucky statutes, averring that the city assessor who listed the distilled spirits of appellant, did so by mistake, without authority of law, and at a much less valuation than was fixed by the State Board of Valuation and Assessment, whose duty it is to make assessment of all spirituous liquors held in bonded warehouses; that for each of said years said distilled spirits were regularly assessed by the State Board of Valuation, and that the same was duly certified to the Auditor and by that official to the Clerk of Carroll County Court, and that appellant had due notice of such assessment, and actually paid taxes both to the County and State upon such valuation fixed by the State Board aforesaid; that the City assessor was wholly without authority to assess spirituous liquors held in bonded warehouses, and the valuation fixed by the City assessor for each year was for an inconsider*ation* sum, much less than that fixed by the State board of valuation upon which appellant paid tax to the county and state.

217 Upon these facts several questions arise, among them these two:

1st. Are distilled spirits in a bonded warehouse, located in a city of the fourth class, to be assessed under sections 3535 to and including 3540, Kentucky Statutes, regulating the assessment of personal property located in a City of the fourth clas-; or, are they to be assessed under sections 4105 to and including 4114 Kentucky statutes, regulating the assessment of distilled spirits?

2nd. If a City, through its assessor, makes an assessment of distilled spirits, is its estopped thereafter to repudiate its acts in thus assessing the liquors as personal property, and if not, may it proceed to collect taxes under section 4105, covering distilled spirits?

This court in the case of the City of Louisville v. Louisville Public Warehouse Company, 107 Ky. 184, held that all distilled spirits in a bonded warehouse must be assessed as directed by section 4105 and not by the City Assessor. Having under consideration Sections 4105 to and including 4114, the court said:

218 "Taking all these provisions together, and looking at the purpose of the act, we do not see any room for doubt that the Legislature by the foregoing provisions meant not only the bonded warehouses kept at the distillery, but the bonded warehouses, wherever kept, or by whomsoever owned, in which the products of the distillery were stored pursuant to the laws of the United States Government, and under the supervision of its officers.

But this proceeding seeks to recover upon assessment made by the city and by the statute quoted the assessment of distilled spirits must be made by the Board of Valuation and Assessment, composed of the Auditor, Treasurer and Secretary of State. The Auditor certifies to the County Clerk of the respective counties the amount liable for county or city taxation. Though appellee is liable to the tax, it is not liable upon the assessment made by the city authorities."

Neither the State, or any municipality therein, is estopped by the laches, or any unauthorized act of its officers in the collection of lawful taxes. The city of Carrollton had no authority, through its assessor, to list distilled spirits held in a bonded warehouse, for taxes, as it attempted to do, but its act in this respect did not work an estoppel. This Court in the case of Commonwealth v. Rosenfield & Bros. Co., 118 Ky. 374, said:

219 "But it is urgently insisted, that the State is now estopped from collecting the interest involved therein because the auditor received the principal sum of the taxes due without interest, and the warehouseman, who was only the custodian and not the owner, of the whiskey, permitted it to be carried away by the owner, and thus lost his lien through the wrongful act of the State's fiscal officer, and that, if the distiller is now required to pay the interest, he will have no recourse against the owner for the amount of the interest adjudged against him. It may be true that this will work a hardship upon the distiller, but it was his duty, under the law, to pay the taxes and the accrued interest and we can not, in his behalf,

waive the time honored and conclusive presumption that he knew the law; and especially is this true since 1897 when the case of Commonwealth v. Taylor, was decided, thus establishing beyond all question that taxes on whiskey in bond bore interest on the assessments made during the bonded period. Waiving this, however, it is elementary that the state is not estopped by the laches of its officers. Bigelow, in his work on estoppel, p. 341, says: "Clearly, the state can not be estopped by the unauthorized act of its officers." The same rule is laid down in Am. & Eng. Ency. of Law (2d Ed. p. 397) in this language: "But such estoppels can not arise from unauthorized act of the agent or officers of the state." See, also, Comlth. v. Carter, 55 S. W. 701; 21 Ky. Law Rep. 1509; Elmondorff v. Carmical, Etc., 3 Litt. 481; 14 Am. Dec. 86; Pulaski v. State, 42 Ark. 118; Attorney General v. Marr, 55 Mich. 445; 21 N. W. 883; and State v. Brewer, 64 Ala. 287."

That a city of the fourth class may subject distilled spirits withdrawn from the warehouses, located within the city limits, to
220 City taxation, is no longer an open question; nor is it necessary that the city should demand the tax of a tax payer before instituting an action for its collection. In the case of Kraver v. City of Henderson, 155 Ky. 633, the facts are very similar to those in the case at bar. In that case it was alleged, in substance, that the warehouseman reported to the Auditor at the prescribed periods, the amounts of whiskey in bond; the Auditor submitted the reports to the State Board of Valuation and Assessment, who valued and assessed the whiskey, and certified same to the Auditor, who verified same to the Clerk of the Henderson County Court, but the county clerk's certificate was, by his oversight or mistake, not made to the City until about two days before the suit was instituted; that the warehouseman made sworn statements, quarterly, of the withdrawals from his warehouse and paid the taxes thereon, due the State and County, but failed and refused to pay the City. The right of the City to maintain the action, though questioned, was upheld by the court, and taxes for several years past were recovered. In this action the appellee, City is crediting the warehouse company with the sums paid upon taxes, and seek- only to recover the balance due
221 under a proper assessment. The warehousemen were not misled or deceived by the act of the city in assessing its distilled spirits along with other personal property, because it was required to and did make numerous quarterly reports to the State Auditor, showing the withdrawal of whiskey from the warehouse for the purpose of aiding the Board of Valuation in arriving at a proper assessment. Moreover, the warehousemen paid the County and State taxes as they became due upon the assessment made by the State Board, and it must have known that its City tax was assessed in like manner. At any rate it will not suffer because it is now required to pay only such taxes as it was in the first place in duty bound to pay being allowed due credit for the sums already paid.

It is also urged by appellant that Section 4105 to and including 4114 Kentucky Statutes, are unconstitutional. This question, however, was made in the case of the Commonwealth v. E. H. Taylor

Jr., & Co., 101 Ky. 325, where this court held said act not in conflict with section 3, of the Bill of Rights nor in contravention of section 174 of the Constitution. It is further asserted that the recent cases of Green v. Louisville & Interurban Railway Co., and Green v. Louisville Railway Co., decided by the Supreme Court of the
222 United States and reported in 37 Supreme Court Reports 673, uproot the contention that the act is constitutional, and hold that the State Board of Valuation, and the City Assessor and Board of Supervisors, acting independently of each other, and fixing different valuations of the same property, work a discrimination *inimitable* both to the Federal and State constitution. In this, however, appellant is in error. It must be borne in mind that complaint is only made of the assessment. The warehouseman had his remedy, in case of an excessive or unfair valuation, by appearing before the Board of Valuation and Assessment at the time he received notice of the valuation fixed, and there make complaint as provided in Section 4107, Kentucky Statutes. This appellant failed to do but acquiesced in the assessment by paying taxes both to the County and State on the valuation fixed by the State Board. This being true, it can not be heard to complain now.

223 The city prosecutes a cross appeal by which it seeks a reversal of that part of the judgment which denies it twenty per cent penalty upon the amount recovered, and interest for several years.

The Distilling company was assessed by the City officer and paid its tax promptly. At the time it made payment it was not in law legally bound to pay, because of the ineffectual attempt of the legislative body of the city to pass a valid Ordinance, levying the tax. Not being in law bound to pay, it could not become delinquent. When the City corrected and vitalized its levying ordinance, it then became the duty of the Distilling Company to pay its tax. This it declined to do on demand of the City Collector. It then became a delinquent and the penalty attached.

The City of Carrollton has an ordinance prescribing a penalty of twenty per cent on delinquent taxes in the nature of Section 4263 Kentucky Statutes.

The provisions in Section 4112 Kentucky Statutes for an eight per cent penalty upon taxes, if payment be delayed beyond fifteen (15) days after the same become due, no doubt was intended as a stimulant to prompt payment of such taxes by the holder of spirituous liquors. In case, however, of the failure of a tax payer to
224 respond after the eight per cent penalty has accrued, the collecting officer is authorized to institute proper proceedings in the courts for collection of the taxes due, "with such interest and penalties as may be provided by law for the collection of other delinquent taxes." This provision has reference to the twenty per cent penalty provided by Section 4263-4264 Kentucky statutes. A warehouseman may avoid this penalty by paying within the prescribed time, but if he delays beyond fifteen days he is subject to eight per cent penalty upon his tax bill together with such interests as

have accumulated, even though payment be thereafter made with
suit. If, however, the warehouseman decline to pay and the collec
is forced to resort to an action in the Courts, the twenty per c
penalty may be recovered as compensation to the officer who pro
cutes the action. In such instance the twenty per cent penalty is
lieu of the eight per cent which is allowed where no suit is requir
but the collector is not entitled to take two penalties. The les
penalty merges into the greater where the collector is forced to i
stitute and prosecute an action in the courts.

225 The circuit court correctly fixed the time from which
compute interest on the delinquent tax.

For these reasons that part of the judgment, which fizes the penal
at eight per cent, is reversed with directions to enter a judgment f
a penalty of twenty per cent, and affirmed in all other respects b
upon the original and cross appeal.

Whole Court sitting.

Winslow & Howe, Carrollton, Ky., for Appellant.

J. A. Donaldson & Sons, Carrollton, Ky., for Appellee.

226 And again on the 29th day of January 1918, the followi
Order was entered herein.

Order.

JETT BROS. DISTILLING CO., Appellant,

vs.

CITY OF CARROLLTON, Appellee.

Comes the Appellant and files herein, petition and moves the Co
to grant it a re-hearing in this case. Motion submitted.

The petition for re-hearing is in words and figures as follows:

227 *Petition for Rehearing.*

Court of Appeals of Kentucky.

JETT BROS. DISTILLING COMPANY, Appellant,

vs.

CITY OF CARROLLTON, Appellee.

We respectfully ask of the court a rehearing upon the followi
points, which we shall endeavor to make as brief and as clear as
possibly can.

Statute of Limitations.

In Chicago, St. Louis & N. O. Ry. Co. v. Commonwealth, 115 Ky. 278, 282, this court said:

"It is the policy of the law to put at rest stale demands, of whatever character. This applies as well to taxes as to other matters."

If ever there was a case where the statute of limitations ought to be applied, a case where it was only fair and just that it should be applied, it is this case. It was specially pleaded in the 21st paragraph of the answer. We ask the court to remember that in the years 1907, 1908, etc., for which the City of Carrollton under a levy made in 1916, is now seeking to recover certain additional taxes, the
228 Jett Brothers Distilling Company did absolutely everything that the law required it to do in connection with the taxation of the whiskey in its possession. It reported same to the Auditor, as required by Kentucky Statutes, Section 4106, so that he might lay the same before the Board of Valuation & Assessment; and when the Assessor for the City of Carrollton, conceiving that he had the right to assess the whiskey for city taxation, called upon the Distilling Company, it gave him a true list of the whiskey in its possession. Then, when the City, by its council, levied a tax of 75 cents on each $100.00 worth of taxable property "as the same appears from the assessment and valuation made as of date April 1, 1907, by the Assessor of said city, and equalized by the Board of Equalization of said city;" it paid the tax thus levied. There was nothing which it was required to do in connection with the taxation of whiskey in its possession which it did not do. Then, as the years rolled around, the owners of the whiskey demanded same from time to time, offering to pay, and paying, the taxes claimed by the United States Government and the State of Kentucky and the County of Carroll and the City of Carrollton. And thereupon the whiskey of course was delivered to these owners, and they took it and disposed of it, and the same has long since been out of possession of the Jett Bros. Distilling Company. Then, after all this had been done and the whiskey was gone, the City of Carrollton in the year 1916 concluded that it had a
229 right to collect taxes based on the assessment of this whiskey by the State Board of Valuation & Assessment, which was much higher than the valuation which had been placed upon it "by the assessor of said city and equalized by the Board of Equalization of said City;" this valuation by the City authorities on which the tax was paid having been, by the way, at least as high as—in fact much higher—than the valuation of all other property at the same time in the City of Carrollton, in proportion to its actual value, as shown by the admitted allegations of the 19th paragraph of the answer. And thereupon in 1916, the City passed an ordinance making a levy of 75 cents on each $100.00 of value of the property, without limiting this, as the former resolution had done, to the value as fixed by the local assessor and local Board of Equalization. As said before, the whiskey had by that time passed out of possession of the Jett Bros.

Distilling Co., so that if it is compelled to pay this additional t
under the levy of 1916 for those past years, it will be compelled
pay upon property which neither belongs to it nor is in its pos
sion, and will simply lose whatever it is thus compelled to pay,
situation which arises absolutely without any fault or omission on
part.

Without attempting to argue, and without arguing, that the City
estopped by these facts, we simply refer to them in this present co
nection by way of emphasizing the statement made by us in th
beginning, that if ever there was a case where a statute of lim
230 itations ought to apply, it is the case at bar, a case where
person in possession of property for the years for which th
taxes are now sought to be collected, did everything in those ye
which the law required of him, and everything which he could do
connection with the taxation of the property, listing it for taxati
and paying all taxes demanded of him, including a tax demanded
the City of Carrollton on this very property, and then surrender
the property to the owner when he made legal demand for it, a
where an attempt is now made by the City of Carrollton to make
new levy, going back nearly ten years and seeking in this way to r
quire this Distilling Company to pay taxes on property which at th
present time it no longer owns, and which has passed out of
possession, much of which having doubtless been consumed, and th
whereabouts of the rest of it being unknown. There certainly ough
to be a statute of limitations to protect against such injustice; an
we believe there is one in the statute governing cities of the four
class, which includes the City of Carrollton.

Before referring to the statute governing cities of the fourth cla
it seems not out of place to refer to the fact that the plain spirit of th
general law regulating the subject of revenue and taxation, and al
on the subject of limitation of actions, seems clearly to be in fa
of limiting a claim of the kind here presented to a period of five ye
in the past. If it were a matter of the assessment of prope
for taxation, in other words, if the owner or possessor of pr
231 erty had been delinquent in failing to list the property for
sessment and in this way it had been omitted and had esca
taxation, the right of the State or City to go back and assess the pr
erty, so as to make a basis for the collection of a tax upon it, wo
be unquestionably limited to a period of five years, because th
statute expressly says so. Kentucky Statutes, Section 4021, expre
provides that,

"When any lands or improvements shall not be assessed in a
one year, it may be assessed retrospectively in the manner provid
for by law, for that year, at any time not later than five ye
thereafter; but the lien thereby accruing shall not prejudice t
rights of purchasers acquired in the meantime."

Therefore, as said before, if the property has escaped taxati
on account of the delinquency of the owner or possessor in fail
to list it for taxation, the taxing authorities are not allowed to
back and assess it retrospectively for a period exceeding five ye

Again, if the property has been assessed, but the authori
have been remiss in failing to collect the tax for five years af

the assessment, the lien upon the property thereby expires by limitation, as shown by the first part of Section 4021.

Furthermore, thinking that the limitation contained in the present existing law as contained in Section 4021, to which we have just referred, was not sufficiently sweeping, the Legislature in 1912 amended Section 4021, as follows:

"No action or other proceeding for the enforcement of
232 any lien for taxes or for recovery of possession of any property which has been sold for taxes shall be maintained unless such action or proceeding is commenced within five years from the date on which said taxes became in arrears." (Section 4002*1a*.)

This was doubtless supposed to be sufficiently sweeping to cover any kind of a case that can arise for the recover- of back taxes, although, strictly speaking, it can not properly be said that the taxes now sought to be collected "became in arrears" in 1908, because all taxes claimed against the property in 1907 were in fact paid at that time, and this levy of 1916 of course had not then been made; so that while the present case manifestly comes within the spirit of this limitation, it does not come within its letter.

Then there is another statute, a section of the general statute of limitations, which in spirit covers such a case as we have here. It is Section 2515, which fixes a limitation period of five years for "an action upon a liability created by statute, when no other time is fixed by the statute creating the liability," it being expressly provided that this limitation, and in fact all other limitations contained in the chapter on "Limitation of Actions," shall apply to actions even by the Commonwealth, and of course to actions by a city (Kentucky Statutes, Section 2523).

233 We suppose it will be claimed that there was no legal "liability" created by the statute until a valid levy was made, although the property was duly and in proper time assessed for the year 1907 and for each of the subsequent years, whether you regard the legal assessment for city purposes as being the one made by the State Board of Valuation & Assessment, or the one made by the City Assessor; and although the City of Carrollton supposed it had made, and everybody else supposed it had made, a levy for each of these years; and although the taxes based on that levy for each of these years were in fact paid.

Clearly all of these statutes show a purpose on the part of the state not to permit claims for back taxes to run back more than five years, even where the failure to tax has been due to a delinquency on the part of the owner of the property, as where he fails to list it for taxation, thus causing it to escape assessment; though it is claimed that where the owner does everything the law requires of him, and where the city seeking to tax is the only person that has been remiss, and even where it has misled the owner to his hurt by making a levy and a demand for a certain amount, it can thereafter go back for any number of years, whether five, ten, fifteen, twenty or fifty, and make a levy for past years, if it turns out that its original levy was void for a failure to carry out the law, and can make the person who was in possession of

234 the property in those past years pay this new tax, though he has ceased to be the owner of the property, and it has passed out of his possession and away from his control. We do not believe it was ever contemplated that such a situation as the one just described should be possible.

But, however the case may be as to the general statutes on the subject of revenue and taxation and on the subject of the limitation of actions, we submit that the statute for the government of cities of the fourth class, within which class the City of Carrollton comes, and by virtue of which the taxes now sought to be recovered were levied, does forbid that a city of the fourth class shall attempt to tax property for more than five years past.

Section 3542 of the Kentucky Statutes, being one of the sections of the statute for the government of cities of the fourth class, expressly provides:

"If, for any reason, any property subject to taxation has not been listed, the council may assess same; may not be taxed or listed for more than five years last past."

It is manifest that some words have been omitted from the sentence quoted, though we have examined it as printed in the session acts of 1894, that being the year in which the original section was amended so as to embrace the words quoted, and have examined the original enrolled bill, and it is printed in the sessions acts and written in the enrolled bill exactly as it is in Carroll's Statutes. Clearly, however, the meaning is that property

235 "may not be taxed or listed for more than five years last past." This is a plain limitation, not simply upon the right to list for taxation, but upon the general right to "tax." The assessment of property is not the same as the levying of a tax. And of course the levying of a tax is not the same as the assessment of property. In order to collect a tax there must be both an assessment and a levy. But the power to tax includes both the power to levy and the power to assess. And the prohibition of this statute is not simply against the assessment after more than five years have passed, but it is against the power to tax, which includes both the assessment and the levy. Property "shall not be taxed or listed for more than five years last past." The court can not reject the word "taxed" in this sentence. The Legislature inserted it in addition to the word "listed" and we must presume it was inserted with a purpose, and with and understanding of what is comprehended within the word "taxed." In other words, this statute in substance provides that property shall not be taxed for more than five years last past, which means there shall neither be a retrospective assessment nor a retrospective levy—no retrospective taxation—for more than five years last past. And this is just, and manifestly within the spirit of the whole system of taxation as heretofore pointed out.

We therefore submit that when the council of the City of Carrollton came in July, 1916, to make its levy for taxes (on

236 which the present action is based), treating all previous levies, including the previous levy of that year, as void, it had no power to do more than to make a levy for 1916, 1915,

914, 1913 and 1912. To do more than this would be to tax roperty for more than five years last past. And this is expressly orbidden by the statute governing cities of the fourth class, includ- ng the City of Carrollton.

Federal Questions.

Due Process of Law.

The facts to which we have called attention in discussing the tatute of limitations as applicable to this action show that they ome within the protection not only of the statute of limitations, ut within the protection of the Constitution of the United States. Ve submit that for the City of Carrollton to attempt in 1916 to evy a tax as against the Jett Bros. Distilling Co., upon property hich at that time was neither owned, possessed nor controlled by , and which in fact is not shown to have been even within the urisdiction of the City of Carrollton in 1916, is to take property ithout due process of law, contrary to the provisions of the four- enth amendment to the Constitution of the United States.

We have heretofore called attention to the admitted facts of his case. It is true that the whiskey involved, say in the tax of 907, was in possession of the Jett Bros. Distilling Co. in 1907, whether owned by it or not, and was at that time in the 37 City of Carrollton. But it is also true that this property was by the Jett Bros. Distilling Co. listed for taxation exactly s required by law. It omitted nothing which by the tax laws was required to do, or had the power to do. Thereupon the City f Carrollton made a levy, and by the very terms of that levy it onfined it to 75 cents on each $100.00 of value as fixed by the ssessor of the City of Carrollton. The Jett Bros. Distilling Com- any had no power to compel the City of Carrollton to make a vy or to make a greater levy than the one it did make. And rtainly it was not called upon to attempt to compel the City of arrollton to make a greater levy of taxes than it chose to make. he exact amount of the taxes due under that levy, made in 1907, pon the whiskey in question was paid; and thereafter the owners f the whiskey presented their warehouse receipts for the same nd demanded possession of it, and of course got it. Thus the roperty passed entirely out of the possession and control of the tt Bros. Distilling Co. These facts being true, we submit that r the City of Carrollton, in 1916, when it is not shown that this hiskey was even within the city at that time, had no jurisdiction levy a tax upon that property, and certainly can not call upon e Jett Bros. Distilling Company to pay the tax, when the com- any was not the owner of the property and had neither the pos- ession of nor the control over it in 1916. And for the City to do such a thing, and to force Jett Bros. Distilling Company 38 to pay this tax, is to take its property without due process of law, contrary to the Federal Constitution.

Think of what the levy of 1907 meant, and then think of what e levy of 1916 means. To quote again the language of the levy

of 1907, which we have heretofore quoted, it was a levy of 75 ce
"on each $100.00 worth of taxable property in the City of Carr
ton, as the same appears from the assessment and valuation m
as of date April 1, 1907, by the assessor of said city, and equali
by the Board of Equalization of said City." Suppose for illus
tion, that the whiskey involved herein was assessed by the Asse
of Carrollton for 1907 at $10.00 a barrel, so that ten barrels the
were assessed at $100.00. On that assumption the meaning of t
levy was that a tax of 75 cents was made on these ten barrels
whiskey. Suppose, however, that the State Board of Valuation
Assessment assessed these barrels of whiskey at $15.00 a barrel, s
to make the assessment of these same ten barrels amount to $150.
Now under the levy of 1916, which is simply 75 cents on e
$100.00 of value, which this court construes to mean value as fi
by the Board of Valuation & Assessment as the only lawful ass
ing body, this tax of 75 cents on each $100.00 of value means a tax
$1.12½ on these same ten barrels of whiskey, instead of a tax of
cents, as levied in 1907. The levy of 1916 was not a mere case
the correction of an infomality, such as a statement of
239 purpose of a levy where the original levy had failed to s
this, but it is something entirely different. Referring to
illustration given above, the council of the City of Carrollton,
1907, only meant to levy a tax of 75 cents on the ten barrels
whiskey in question. It did not mean to levy any more. It
not intend to levy any more. It did not try to levy any more.
did not levy any more. And that levy was paid. Never until
year 1916 was there an attempt to levy a tax of $1.12½ on these
barrels. To the extent of the excess above the levy of 1907, to-
using again the same illustration, to the extent of 37½ cents th
increasing the levy from 75 cents to $1.12½, this was a levy wh
never had been attempted until the year 1916. And by that ti
as said before, the property upon which the tax was sought to
levied not only did not belong to the Jett Bros. Distilling Compa
but was not in its possession, nor under its control, and it is
alleged or shown that it was even within the City of Carrollt
And we submit that this City did not have the constitutional po
at that time to levy this tax and collect it off of the Jett Bros. D
tilling Company; and that to do so would be to take its prope
without due process of law, contrary to the Federal Constitution.

Think of what any contrary ruling would mean. There wo
never be a time when the distiller could safely let the whiskey
his possession be taken out of his warehouse by the owner. In f
it would amount to a practical prohibition against the sale
240 the whiskey. As we have said before, this was not a case
omission to list property for taxation. When a person ow
property, or has property in his possession on September 1, it is
duty to list it for assessment; and if he does not list it, and as a res
it is not assessed and not taxed, it is his fault, and he knows it
be liable to assessment for five years to come. But in the case at
the possessor of the whiskey, the Jett Bros. Distilling Co., did lis
for assessment; it did everything it was required by law to do. A

the City of Carrollton levied a tax, which was exact in terms, and that tax was promptly paid. The Distilling Company had no control over the taxing authorities of the City of Carrollton. It could not compel them to levy a different tax from the one they did levy, and certainly it was not required by law to do so. And if, when a tax has been levied by the authorities charged with that duty, and this tax thus levied has been paid by the custodian of property, it is permissible for these taxing authorities, ten, fifteen or twenty years thereafter to make another levy for the same year as that for which the levy which has been paid was made, then there would never be a time when the owner or possessor of property could safely sell it or let it go out of his possession and feel sure that he would not thereafter, and possibly ten or twenty years thereafter, be called upon to pay a tax on account of this property.

241 Whether or not the taxing authorities can make a retrospective levy and collect it out of property which is still owned by, or still in the possession or control of, one who owned it or held it in the year as of which the retrospective levy is made, we need not stop to consider. But we do insist that no such retrospective levy can be lawfully made on property which at the time of the levy has been sold, and has passed out of the possession and control of the person who is sought to be made liable for the tax thus retrospectively levied. And we submit that to do this, and to compel such a person to pay this tax is to take his property without due process of law.

In passing on this petition for rehearing, even if the court should overrule it, we ask the court to rule expressly in its opinion on this particular question here discussed; so that if the decision should be adverse to us, there can be no doubt hereafter that this question was presented to and considered and determined by the court. We do not believe the court will deem this an unreasonable or improper request.

Equal Protection of the Laws.

The court in its opinion seems to concede that the assessment of this whiskey at 100% of its value, when all other property in the City of Carrollton was uniformly an intentionally assessed at not exceeding 40% of its value for the purposes of city taxation, is violative of the provisions of the Constitution of Kentucky, which declares that

242 "They" (taxes) "shall be uniform upon all property subject to taxation within the territorial limits of the authority levying the tax." (Constitution sec. 171); as well as violative of the Federal Constitution, which declares that no State shall deny to any person within its jurisdiction the equal protection of the laws, all as declared by the Supreme Court of the United States, in the case of Greene v. Louisville & Interurban Ry. Co., 244 U. S. 499, and Louisville & Nashville R. Co. v. Greene, 244 U. S. 522. But in answer to this the court says:

"It must be borne in mind that complaint is only made of the

assessment. The warehouseman had his remedy, in case of an excessive or unfair valuation, by appearing before the Board of Valuation & Assessment at the time he received notice of the Valuation fixed, and there make complaint as provided in Section 4107, Kentucky Statutes. This appellant failed to do, but acquiesced in the assessment by paying taxes both to the county and State on the valuation fixed by the State Board. This being true, it can not be heard to complain now." (178 Ky. 566.)

We do not believe the court, upon reconsideration, will consider this a sufficient response to the complaint of the citizen as to the constitutional wrong done him, and this for several reasons:

1. The question of whether or not a complaining tax payer had a remedy by appeal to a supervising board, or by practically a petition for a rehearing, or a petition for a new trial, or an answer to
243 a notice to show cause before the original assessing board, often arises, and appropriately arises, where the tax payer brings a suit in equity to enjoin the assessment or collection of the tax; because it is a rule of equity that one can not sue in equity where he has an adequate remedy at law, and especially can not get an injunction in equity against the collection of a tax, without first exhausting the remedies pointed out by the statute for the correction of the wrong. And this rule is applied, with peculiar strictness, by the Federal courts.

But no such question as that arises in the case at bar, because the tax payer is not the complainant, but is the defendant. The City of Carrollton has sued to collect these taxes; and the tax payer, as defendant, simply says the tax is void, because contrary to the provisions both of the State Constitution and the Federal Constitution. And if this is true, then the fact that the tax payer might have made a motion for a new trial before the Board of Valuation & Assessment, does not render the tax valid, or give the City of Carrollton, a cause of action to enforce it.

2. For the Jett Bros. Distilling Company to have gone before the Board of Valuation & Assessment in 1907, or 1908, or 1909, or 1910, etc., and to have insisted that its property should be assessed for taxation in the City of Carrollton, at only 40% of its value, because other property was uniformly assessed in that city at not
244 exceeding that rate, would have been an absolutely vain thing; and the law does not require of any one the doing of a vain or useless thing. This court in the case of Louisville Railway Co. v. Commonwealth, 105 Ky. 710, decided in 1899, held that it was not a valid objection to the assessment of property at its fair cash value by the Board of Valuation & Assessment, that other property was uniformly assessed at less than its fair cash value. And this remained the law, recognized by all taxing authorities in Kentucky, until the decision of the cases of Greene v. Louisville & Interurban Ry. Co., and Louisville & Nashville R. Co. v. Greene, supra, by the Supreme Court of the United States in June, 1917. This Court knows, therefore, that it would have been a perfectly vain and idle proceeding for the Jett Bros. Distilling Co. to have insisted, in 1907, 1908, or 1909, or 1910, or 1911, or 1912, or 1913, or '14,

or 1915, or 1916, that the Board should assess whiskey for taxation by the City of Carrollton at less than its fair cash value, or at a rate not exceeding that at which other property within the City of Carrollton was uniformly assessed for taxation by that city. The tax payer, therefore, did not lose his right to demand of the courts protection of his constitutional rights by reason of the fact that he failed to do that which we conclusively know would have been an absolutely vain and useless thing, by going before the Board of Valuation & Assessment with a demand of the character just described.

245 3. The Jett Bros. Distilling Company is not complaining of the assessment of their property for either state taxes or county taxes, but only of taxes by the City of Carrollton. It does not complain that it has been discriminated against by the State or by the county. It does not allege, and no one alleges, in this litigation, that the State or the county uniformly assesses property for taxation, at less than its fair cash value. If that be a fact, it does not appear in this record. Therefore, if the Distilling Company had gone before the State Board of Valuation & Assessment in 1907, simply on the facts shown by and involved in this record, it could not have complained of the assessment by the Board of Valuation & Assessment, certainly so far as the assessment for State purposes and for county purposes was concerned. Assuredly, therefore, the payment by the Distilling Company of the State taxes and the county taxes, based on the assessment of the property for those purposes by the Board of Valuation & Assessment, and as to which the Distilling Company has made no complaint, and makes no complaint, and so far as this record shows, could not complain, was not a waiver by it of its constitutional right to be taxed by the authorities of the City of Carrollton, in such manner that its taxes "shall be uniform upon all property subject to taxation within the territorial limits of the authority levying the tax." In other words, the uniformity required by the Constitution is uniformity "within the territorial limits of the authority levying the tax"—in this case the City of

246 Carrollton—and if it were true that throughout the State generally, and for the purposes of State taxation, property was assessed at its fair cash value, but if it were also true that within the City of Carrollton property is uniformly assessed by the City Assessor for purposes of city taxation at only 40% of its fair cash value then both the Constitution of Kentucky and the Constitution of the United States require that all property within the City of Carrollton be assessed for taxation by the City of Carrollton at this uniform rate; and if whiskey, because of being assessed by a State Board, and not by the City Assessor, is assessed by this Board for Taxation by the City of Carrollton at its full cash value, when all other property in that City is assessed by the City Assessor at only 40% of its fair cash value, this is a discrimination forbidden both by the Constitution of Kentucky and the Constitution of the United States.

As bearing upon the real merit, the actual justice, of the claim now made, it should be remembered that the taxes which have

already been paid on this whiskey, were at least as great as those which were paid at the same time on all other property in the city of Carrollton, in proportion to its value—in fact were greater—and the present belated effort is to go back and make it pay more, and to enforce this attempt against one who has in the mean time ceased to be either the owner or custodian of the property.

247–8 We therefore ask that this petition be sustained and the judgment reversed.

HELM BRUCE,
GEO. B. WINSLOW,
Attorneys for Appellants.

WINSLOW & HOWE,
BRUCE & BULLITT,
Of Counsel.

January 23, 1918.

Endorsed: Filed Jan. 29. 1918. R. W. Keenon, C. C. A.

249 And again on the 7th day of February, 1918, the following order was entered herein.

Order.

JETT BROS. DISTILLING CO., Appellant,

vs.

CITY OF CARROLLTON, Appellee.

The following order was entered herein. The Appellant filed herein, response to petition for rehearing. Said response is in words and figures as follows:

250 *Response to Appellant's Petition for Rehearing.*

Court of Appeals of Kentucky.

JETT BROTHERS DISTILLING COMPANY, Appellant,

v.

CITY OF CARROLLTON, Appellee.

In response to appellant's petition for rehearing, we respectfully submit the following:

Statute of Limitations.

Quoting from appellant's petition for rehearing, in Chicago, St. Louis & N. O. R'y Co. v. Commonwealth, 115 Ky. 278, 282, this court said:

251 "It is the policy of the law to put at rest stale demands of whatever character. This applies as well to taxes as to other matters."

That is the law but it is no- applicable to the facts in the case at bar, which are similar to the facts in the case of Commonwealth v. C. O. & S. R. Co., 141 Ky. 633, in which the above case is referred to and in which case this court has correctly determined the question of limitations in this action by saying:

"*Now* is it urged by appellees that the fiscal court could not amend its levy orders of 1896 and 1897, 11 years afterwards, and that appellant cannot set up such curative proceedings by amended petition in this case. The statute of limitations is relied on. In Commonwealth v. Nute, 115 Ky. 239, 72 S. W. 1090, 24 Ky. Law Rep. 2138 and C. St. L. & N. O. Ry. Co. v. Com., 115 Ky. 278, 72 S. W. 1119, 24 Ky. Law Rep. 2124, it was held that the statute of limitations of five years applies to assessments of property for purposes of taxation—that is, when the property has been omitted from assessment for any year, and no liability sought to be imposed on it specifically by the state or other taxing municipality, the statute is a bar to such assessment. But it was not held in either of the cases that the political act of levying a tax was barred in five years or other time.

252 The fiscal court was under the duty, if it levied a tax at all, to specify the purposes to which it was to be applied. The Constitution so required for the protection of the public, the taxpayers, and creditors of the county. If that body failed to so specify, it did not relieve the county of its obligation for its debts, and consequently did not relieve taxpayers of their duty and liability to provide the means of discharging the county's obligations whenever a valid procedure was adopted for their protection. We say in such cases that an order or ordinance or statute failing in the particular mentioned is void; and it is. But we have not said, and it is not true that every thing else done toward providing for the gathering in of a necessary sum by taxation to defray the county expenses was void also; nor that it was without the power of the levying body to make a valid levy in lieu of a void one. On the contrary it has more than once been declared that it is within the power and was their duty to do so. Levi v. Louisville, 97 Ky. 294, 30 S. W. 973, 16 Ky. Law Rep. 872, 28 L. R. A. 480; Somerset v. Somerset Banking Co., 109 Ky. 549, 60 S. W. 5, 22 Ky. Law Rep. 1129; Morrell Refrig-ator Car Co. v. Com., 128 Ky. 447, 108 S. W. 926, 32 Ky. Law Rep. 383; L. & N. Ry. Co. v. Louisville, 29 S. W. 865, 16 Ky. Law Rep.

253 795. When it is said that such levy ordinances are void, it is meant that they are void until they are made to comply with the requirements of the Constitution.

Nor, is is perceived why the fiscal court might not do voluntarily what it could have been compelled by mandamus to do; that is, in the levy orders specify the purposes of the levy. The taxpayer who has not paid is certainly not prejudiced by the proceeding. He is protected when he is required to pay by an order complying in form with the Constitution. He is not deceived into believing that he was not intended to be taxed, whereby he has failed to protect himself

by preserving evidence of the value of the property assessed. Just the contrary is true here. Indeed the county has been endeavoring by all means afforded by law for more than ten years to collect this tax, and has been resisted at every step by appellees.

From 1896 to 1899 appellees contested before the state board of assessment and valuation their liability for franchise tax on this property at all. The assessment was finally made in 1899. The state board failed for about two years to certify to the county of Ohio its proportion of the valuation. Both these were essential steps preceding the county's right to collect the tax—were in fact parts of the assessment act. In 1901 appellees enjoined the state board from certifying the values to the county. That action was not dis-
254 posed of until the opinion of Southern Ry. Co., etc., v. Coulter, Auditor, Supra, in 1902. Then this suit was begun in 1903. So this is not a stale or neglected demand. Nor is it barred by limitation.

The plaintiff's cause of action was defective when the petition was filed, not because there was not a liability on the part of appellees, nor because of lack of right on the part of plaintiffs, but, because of an omission by officials to do in a particular way that which they had attempted to do, but failed through inadvertance to do as in the manner required. The failure did not defeat the county's right to assess or collect the tax. It merely postponed it until the omission was cured. There "may be a vast difference in legal effect between an entire omission to levy a tax, and an ineffectual effort to levy it. The former could not be amended. The latter may be. If the fiscal Court had failed altogether—had not attempted, let us say, to levy a tax for 1896, it was nevertheless competent for it to levy it subsequently, for until its power was exhausted it might be exercised."

"The rights of the parties would however be fixed as of the date of the levy, not as of the time when it might have been first levied. But where an attempt had been made to levy the tax the ordinance fixing the amount duly passed, and the assessment of all property liable to the tax had been regularly made, it was competent for the fiscal court to cure the defect in the proceedings so as to make them conform to the law, as it would have been to correct any other mistake in any other point of the assessment proceedings so as to make valid that which had been lawfully attempted. All other pro-
255 ceedings are amendable so as to effectuate the purpose of the law in providing for the tax, and it is not perceived why the order making the levy may not also be amended so as to conform to the statute or the provision of the Constitution. When other proceedings are amended, or otherwise corrected, as they may be in some instances by different tribunals even from those committing the errors, the completed and corrected assessment takes effect as of the date when it would have taken effect had the proceedings conformed strictly to law in the first instance. There is no apparent reason why in the particular of the levy ordinance the same effect should not be given to the amendatory act. A tax would be void only when there is lack of power to levy it. In every other particular the proceedings, however informal, may be cured and perfected so as to comply with

the law. It would be a strange, as well as destructive, rule of law, that would make it impossible to cure errors in procedure of form in taxing matters, making it thereby possible for ignorant or designing officials to stop the government by failing to strictly follow in correct time and manner the prescribed procedure in assessments."

If the fiscal court of Ohio County was not barred by the statute of limitations when it amended its levy orders eleven years after it first attempted to levy a tax, then the amendments of the levies for the years 1907, 1908, 1909, 1910, 1911, 1912, 1931, 1914, 1915, and 1916 as made by the City Council of the City of Carrollton in the year 1916 were not barred by the statute of limitations and the tax that thus become due is not a stale or neglected demand.

256 Moreover, the act prescribing the method of assessment and collection of taxes on whiskey in bonded warehouses in the state of Kentucky does not provide any limitation whatever and in the case of Illinois Cent. R. Co. v. Commonwealth 128 Ky. 268, this Court said:

"Where the Legislature created by statute a liability and in *in* the statute provided no limitation, necessarily the limitation provided by the general law, in section 2515, Ky. Stat. 1903 applies."

By said decision it was determined that the only limitation that applies to the collection of taxes on whiskey in bonded warehouses is that limitation provided by section 2515 Ky. Statutes.

In construing the application of section 2515 Ky. Statutes to cities in the collection of taxes, this court in the case of Chatterson et al. v. City of Louisville, 145 Ky. 485, said:

"It is a cardinal principle in the construction of statutes of limitation, which has been recognized from the beginning that the statute does not begin to run against the plaintiff until his cause of action accrues. This is expressly so provided in section 2515 Kentucky statutes, which creates the limitation of five years. Section 4021 is to be read in connection with 2515, as the different sections of the revision are to be read together. It was not contemplated by section 4021 that the statute should run against the City before its cause of action accrued, or that the City should have more

257 than five years in any case after its cause of action accrued, as would be the case where the alienation was made after August 20th, if the five years is to be counted in all cases from the date of the alienation. The meaning of the statute is that the City is to have five years to collect its taxes after its cause of action accrues, when the property is regularly assessed."

By section 4110 Kentucky statutes, "taxes on distilled spirits shall be due on the second day of January, May and September next after the said Government tax become- due or be paid or when the spirits are removed from the warehouse." This action was filed in the Carroll Circuit Court on the 15th day of August 1916. The record in this action shows that none of the taxes sought to be recovered by this action became due before the 2nd day of September 1911. If none of the taxes sought to be recovered by this action became due before the 2nd day of September 1911, "it is a cardinal principle"

that the statute of limitation did not begin to run against the City of Carrollton until the 2nd day of September 1911.

Federal Questions.

Due Process of Law.

In the words of this court in the case of Com. v. C. O. & S. R. Co. 141 Ky. 633, "He is not deceived into believing that he was not intended to be taxed, whereby he has failed to protect himself by preserving evidence of the value of the property assessed. Just
258 the contrary is true here." Appellant has not been deceived (as it would have the court to believe) into believing that he was not intended to be taxed. In each of the years 1907 to 1916 inclusive appellant, Jett Brothers Distilling Company, as shown by its admission in this record, knew of the attempt of the City of Carrollton to levy a tax of seventy-five cents *of* each one hundred dollars worth of taxable property in the City of Carrollton and recognized the rate and the validity of said levies, by paying certain taxes to the City of Carrollton Ky. during each of said years at said rate. It also knew of the assessment of the whiskey held by it in its bonded warehouses in the City of Carrollton, Ky. during each of said years by the state Board of Valuation and Assessment and it received due notice during each of said years of the assessment and valuation of said whiskey made by said Board of Valuation and Assessment for each of said years for state, county, city, and local taxing district taxation. More than that it is presumed to know of its liability to the City of Carrollton for the payment of said taxes at said rate on the value thereof as assessed by the State Board of Valuation and Assessment for each of said years. During all of said years there was no liability on its part to pay the City of Carrollton taxes on any assessment of whiskey in bonded warehouses, made by the City Assessor, its only liability to the City of Carrollton, for taxes on whiskey in
259 bond in its warehouse as it knew, was its liability for taxes on said whiskey, created by the assessment and valuation made by the state board of valuation and assessment. See Louisville v. Louisville Public Whse. 107 Ky. 184, in which case it was held that an assessment made by the City assessor of whiskey in bonded warehouses is void.

That appellant knew the law as to the only way of assessing and paying taxes on distilled spirits in bonded warehouses and recognized said law by making its annual statements and quarterly reports to the State Auditor as therein required and was duly summoned to appear before said board of valuation and assessment during each of said years to show, if it could, why the valuation and assessment of said whiskey made by said board should not be made, and knew of the attempt to levy a tax of seventy-five cents on each one hundred dollars worth of taxable property in the City of Carrollton during each of the years 1907 to 1916 inclusive and recognized the validity of said attempted levies by paying certain taxes to the City of Carrollton during each of said years at the rate fixed in said attempted levies and

knew the law in effect made it the agent of the City of Carrollton to collect said taxes on the withdrawal of said whiskey from its bonded warehouses, are admitted facts and conclusive presumptions of law which defeat appellant's plea that this action is an attempt to take property from the appellant without due process of law.

260 In response to the statement that the whiskey has passed out of the possession and control of the person sought to be made liable for the tax, we quote the following from the case of Com. v. Greenbaum 140 Ky. 221.

"Thus it will be seen that the imposition and collection of the tax from the warehouseman is purely a question of power, and does not depend upon whether or not the Legislature has seen fit to provide against every contingency which might result in the warehouseman's failure to collect the tax. Furthermore, when the distiller manufactures and stores whiskey and issues warehouse receipts to his purchasers, he does so knowing that the only protection he has, so far as the statute is concerned, is the lien given upon the whiskey. If he desires additional protection, he must make his contracts accordingly. If he fails to do so, a hardship may result, but it is a hardship against which the Legislature has not provided."

And again in the case of Com. v. Rosenfield Bros. & Co. 118 Ky. 374, the Court said:

"But it is urgently insisted that the State is now estopped from collecting the interest involved therein, because the auditor received the principle of the taxes due without interest, and the warehouseman, who was only the custodian, and not the owner of the whiskey, permitted it to be carried away by the owner, and thus lost his lien through the wrongful act of the State's fiscal officer; and that,

261 if the distiller is now required to pay the interest, he will have no recourse against the owner for the amount of the interest adjudged against him. It may be true, that this will work a hardship upon the distiller, but it was his duty under the law, to pay the taxes and the accrued interest, and we can not, in his behalf, waive the time honored and conclusive presumption, that he knew the law."

Certainly this action is not an attempt to take property from the appellant without due process of law, when it was instituted and is now posecuted only for the purpose of enforcing the collection of taxes due the City of Carrollton under and by virtue of the Statutes of the State of Kentucky and the levy ordinances of the City of Carrollton, which the appellant was presumed to know and did know as is shown by the reports it made to the Auditor of Public Accounts as required by said statutes and by paying certain taxes to the City of Carrollton in pursuance of said levy ordinances.

Equal Protection of the Laws.

Appellant in its petition for rehearing on page 16 quotes the following which is this Court's answer to the question of equal protection of the laws:

262 "It must be borne in mind that complaint is only made of the assessment. The warehouseman had his remedy, in case

of an excessive or unfair valuation, by appearing before the Boa
of Valuation and Assessment at the time he received notice of t
valuation fixed, and there make complaint as provided in Sectio
4107, Kentucky Statutes. This appellant failed to do, but acqu
esced in the assessment by paying taxes both to the county and sta
on the valuation fixed by the State Board. This being true, it ca
not be heard to complain now." (178 Ky. 566.)

The correctness of said answer as given by this Court, is prov
by the following facts disclosed by the record in this action. Du
ing each of the years 1907, 1908, 1909, 1910, 1911, 1912, 191
1914, 1915 and 1916 the appellant, as required by the Statutes reg
lating the assessment and collection of taxes on distilled spirits co
tained in bonded warehouses, reported to the Auditor of Public A
counts the amount of whiskey held by it in its bonded warehous
in the City of Carrollton, Kentucky, thereby recognizing the validi
of the law which required it to so report. On these reports, so ma
the Auditor, the valuation and assessment of said whiskey for eac
of the years mentioned was made by the State Board of Vaulatio
and Assessment and the appellant was given due notice each of sa
years of the valuation and assessment so made by said Boar
263 Under the provisions of the Kentucky Statutes appellant w
entitled to appear and be heard by said Board and ask for
change of valuation. The appellant, after receiving notice, fail
to take advantage of the right conferred upon it by the Statutes, an
failed to appear before said Board at any time during any of the nin
years mentioned. The law gave it the right and it could not assum
that it would be a vain thing for it to insist upon a lower valuatio
If the whiskey was over valued it was a duty that it owed itself an
its stockholders and said Board to appear before said Board aft
receiving said notice and then there ask for a change of value unle
it approved of the value so fixed by said Board, regardess of its opi
ion as to what action the Board would take upon its request for
lower valuation. By Section 4107 Ky. Statutes, "The action
the Board shall be final." Appellant knew this was the law an
when it failed to appear before said Board and ask for a reductio
in the valuation or object to the lack of uniformity, now complaine
of, it accepted said Board's assessment and valuation as final an
cannot now complain. It has had its day in Court on the questio
of valuation of said whiskey for taxation, the record in this actio
shows, appellant complied with the law except as to the payment
taxes due the City of Carrollton and recognized the Consti
264 tutionality and validity of same and of each of said asses
ments by its payment of taxes on the quarterly withdraw
reports of said whiskey so assessed, to the County and State, but i
ignored said law and said assessment in the payment of taxes o
said whiskey to the City of Carrollton, when the same law and sam
mode of assessment and payment of taxes on whiskey in bond, wa
by the same act of the Legislature made applicable to the State
County, City and other taxing districts in the State of Kentucky
Appellant has had its day in Court and cannot now be heard t

complain and especially so after acquiescing for a period of more than nine years in the assessments now complained of.

We therefore respectfully ask that appellant's petition for rehearing be dismissed.

J. A. DONALDSON & SONS,
Attorneys for Appellee.

Carrollton, Ky. February 7th, 1918.

265 And then again on the 22nd day of March, 1918, the following order was entered.

Order.

JETT BROS. DISTILLING CO., Appellant,

vs.

CITY OF CARROLLTON, Appellee.

The following order was entered herein.

The Court being sufficiently advised it is ordered that the Appellant's petition for rehearing be and same is hereby over-ruled.

266 Be it remembered that on the 19th day of April, 1918, the Appellant filed in the office of the Clerk of the Court of Appeals, Assignment of Error; Writ of Error; Bond; Præcipe & return; Citation and Return, which are in words and figures as follows:

267 Supreme Court of the United States.

JETT BROS. DISTILLING COMPANY, Plaintiff in Error,

v.

CITY OF *Covington*, Defendant in Error.

Plaintiff in error, Jett Bros. Distilling Company, in the above entitled cause assigns as errors in the judgment of the Court of Appeals of Kentucky, herein complained of, the following, to-wit:

1. The Court erred in upholding as valid the assessments for taxation of the property of the Jett Bros. Distilling Company, involved in this cause, it being shown that said property was thus assessed for taxation at 100% of its fair cash value; whereas all other property in the City of Carrollton, during the same period of time for which the assessment herein complained of was made, was uniformly
268 and purposely assessed for taxation by the City of Carrollton at not exceeding 40% of its fair cash value; and in holding that the Jett Bros. Distilling Company was not by said assessment denied the equal protection of the laws, and that said assessment was not repugnant to the Fourteenth Amendment to the Constitution of the United States.

2. The Court erred in holding that the levy by the City of Carrollton of taxes for certain past years against the Jett Bros. Distilling Company upon property not shown to have been in the City of Carrollton, or to belong to Jett Bros. Distilling Cmpany, at the date of said levy, and when it also appeared that levies by the City of Carrollton of taxes upon the same property had been made in each of said several past years against the Jett Bros. Distilling Company, and that the taxes based on said past levies had been paid by the Jett Bros. Distilling Company to the City of Carrollton and received and retained as such by it, was valid, and was not repugnant to the Fourteenth Amendment to the Constitution of the United States, and especially to the part thereof forbidding any State to deprive any person of life, liberty, or property, without due process of law.

269 3. The Court erred in holding that both the levy of taxes involved in this action, and the assessment of property involved in this action, which levy and assessment were the basis of the taxes claimed by plaintiff, the City of Carrollton herein, were valid, and that neither the levy nor the assessment was requgnant to the Fourteenth Amendment to the Constitution of the United States.

4. The Court erred in holding that the Jett Bros. Distilling Company by failing to appear before the Board of Valuation & Assessment, after receiving notice of the valuation fixed by it, and by paying State and County taxes (but not City of Carrollton taxes) based upon said assessment had lost its right to complain of said assessment as a basis for taxation by the City of Carrollton; and Court of Appeals having held in Louisville Railway Company v. Commonwealth, 105 Ky. 710, decided in 1899 prior to any of the years involved herein, that the Board of Valuation & Assessment in assessing property for taxation, had no right or power to take into consideration the fact that other taxing officers or tribunals, uniformly and purposely assessed all property for taxation at less than its fair cash value, which ruling by the Court of Appeals of Kentucky was never changed until after the Supreme Court of the United States ruled otherwise in 1917 in Greene vs. Louisville & Interurban Ry. Co., 244 U. S. 499 and Louisville & Nashville Railroad Co. v. Green, 244 U. S. 522.

270 5. The Court erred in affirming the judgment of the Carroll Circuit Court, which in effect commanded the Jett Bros. Distilling Company to pay certain taxes to the City of Carrollton based upon a levy of taxes by said City, and an assessment of property by the Board of Valuation & Assessment of the State of Kentucky, which said levy and assessment were both repugnant to the Fourteenth Amendment to the Constitution of the United States.

Wherefore, plaintiff in error prays that the judgment of the Court of Appeals of Kentucky be reversed.

JETT BROS. DISTILLING COMPANY,
By HELM BRUCE, *Attorney.*

Endorsed and filed April 19th, 1918. R. W. Keenon, C. C. A.

271 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judges of the Court of Appeals of the State of Kentucky, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said Court of Appeals, before you or some of you, being the highest court of law or equity in said State in which a decision could be had in a suit between Jett Bros. Distilling Company, appellant, and the City of Carrollton, appellee, wherein was drawn in question the validity of an authority exercised under the State of Kentucky on the ground of its being repugnant to the Constitution of the United States, and which decision was in favor of its validity, and where a right, title, privilege and immunity were claimed under the Constitution of the United States and the decision was against such right, title, privilege and immunity specially set up and claimed by said appellant under said Constitution, a manifest error has happened to the great damage of the Jett Bros. Distilling Company as by its complaint appears;

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and the proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington in the District of Columbia on the 18th day of May next in said Supreme Court, to be then and there held, that the record and proceedings aforesaid being in-
272 spected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness Honorable Edward Douglass White, Chief Justice of the United States the 19th day of April, A. D. One Thousand Nine Hundred and Eighteen.

J. W. MENZIES,
Clerk of the District Court of the United States
for the Eastern District of Kentucky,
By CHAS. W. WIARD, *D. C.*

Allowed by

W. E. SETTLE,
Chief Justice Kentucky Court of Appeals.

April 19, 1918.

Endorsed: Filed April 19, 1918. R. W. Keenon, C. C. A.

273 Court of Appeals of Kentucky.

JETT BROS. DISTILLING COMPANY, Appellant,

v.

CITY OF CARROLLTON, Appellee.

Know all men by these presents: That we, Jett Bros. Distill Company, and Josiah S. Jett, Surety are held and firmly bound u the City of Carrollton in the sum of $7,000.00 to be paid to the s City of Carrollton; to which payment well and truly to be made, bind ourselves and each of us jointly and severally and our, a each of our, heirs, executors, administrators and successors firmly these presents.

274 Sealed with our seals and dated this 19th day of Ap A. D. One Thousand Nine Hundred and Eighteen.

Whereas the above named Jett Bros. Distilling Company h prosecuted a writ of error from the Supreme Court of the Uni States to the Court of Appeals of Kentucky to reverse the judgm rendered in the above entitled suit by the Court of Appeals Kentucky,

Now, therefore, the condition of this obligation is such that the above named Jett Bros. Distilling Company shall prosec its said writ of error to effect and answer all costs and dama if it should fail to make good its plea, then this obligation sh be void; otherwise the same shall be and remain in full force a virtue.

JETT BROS. DISTILLING COMPANY
By HELM BRUCE, *Atty.*
JOSIAH S. JETT, *Surety.*

Sealed and delivered in the presence of, and approved by
W. E. SETTLE,
Chief Justice of the Court
of Appeals of Kentucky.

April 19th, 1918.

Endorsed and filed April 19th, 1918. R. W. Keenon, C. C. A

275 Court of Appeals of Kentucky.

JETT BROS. DISTILLING COMPANY, Appellant,

vs.

CITY OF CARROLLTON, Appellee.

The Clerk of the Court of Appeals will please copy into t Transcript of the Record on the writ of error from the Supre Court of the United States to the Court of Appeals of Kentuc

herein, the entire record in the above entitled cause as the same is in the office of the Clerk of the Court of Appeals of Kentucky.

GEO. B. WINSLOW,
HELM BRUCE,
Attorney- for Appellant.

The undersigned as attorneys for appellee acknowledge receipt of a copy of the above præcipe and hereby accept service and waive notice of the filing of same in the Court of Appeals of Kentucky.

Carrollton, Ky., April 19th, 1918.

J. A. DONALDSON & SONS,
Attorneys for Appellee.

Endorsed: Filed Apr. 19, 1918. R. W. Keenon, C. C. A.

276 UNITED STATES OF AMERICA,
Eastern District of Kentucky, ss:

To the City of Carrollton:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the City of Washington in the District of Columbia on the 18th day of May next pursuant to a writ of error filed in the Clerk's Office of the Court of Appeals of Kentucky, wherein the Jett Bros. Distilling Company is plaintiff in error and you are defendant in error, to show cause, if any there by, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the United States this 19th day of April, A. D. One Thousand Nine Hundred and Eighteen.

W. E. SETTLE,
Chief Justice of the Court of Appeals of Kentucky.

Service of the above citations waived this April 22nd, 1918. Carrollton, Ky.

CITY OF CARROLLTON,
By J. A. DONALDSON & SONS, *Attys.*

Endorsed: Filed Apr. 19, 1918. R. W. Keenon, C. C. A.

277 STATE OF KENTUCKY,
Court of Appeals:

I, Rodman W. Keenon, Clerk of the Court of Appeals for the State of Kentucky, certify that the foregoing is a true and correct copy of the record called for in the Præcipe filed by the Appellants,

now plaintiff in error, in the case of Jett Bros. Distilling Co. v
City of Carrollton, Appellee, now defendant in error, as shown b
the record on file in my office.

In testimony whereof, witness my hand *in* seal this May 4th, 191

[Seal Kentucky Court of Appeals.]

RODMAN W. KEENON,
Clerk Court of Appeals.

Fee, 75.00.

Endorsed on cover: File No. 26502. Kentucky Court of A
peals. Term No. 444. Jett Bros. Distilling Company, plaint
in error, vs. City of Carrollton. Filed May 11th, 1918. File N
26502.

Supreme Court of the United States.

JETT BROS. DISTILLING CO., Plaintiff in Error,

vs.

CITY OF CARROLLTON, Defendant in Error.

Order.

By consent of parties hereto, it is ordered that a certified copy of an order entered by the Court of Appeals of Kentucky on January 18, 1919, in the case of Jett Bros. Distilling Co., Appellant, vs. City of Carrollton, appellee, giving appellant ten days' additional time to file petition for rehearing is filed herein and the record thereby corrected, copy of said order having been omitted from the transcript sent to this Court.

CITY OF CARROLLTON,
By A. E. STRICKLETT,
Att'y for Def't.
HELM BRUCE,
GEO B. WINSLOW,
Att'ys for Pl'ff in Error.

Kentucky Court of Appeals, Winter Term, January 18, 1919.

JETT BROS DISTILLING CO., Appellants,

vs.

CITY OF CARROLLTON, Appellee.

Came parties by counsel and filed an agreement on motion, and by consent the appellant is given ten days' additional time to file petition for rehearing.

COMMONWEALTH OF KENTUCKY,
The Court of Appeals:

I, R. W. Keenon, Clerk of the Court of Appeals of Kentucky, certify that the foregoing is a correct copy of the order extending the time for filing a petition for rehearing in this case, as same appears from the records in my office.

Witness my hand and official seal.

Done at the Capitol at Frankfort this the 11th day of November, 1919.

[Seal Kentucky Court of Appeals.]

R. W. KEENON,
Clerk Court of Appeals of Kentucky,
By W. B. O'CONNELL,
Deputy Clerk.

(154)

Commonwealth of Kentucky, Court of Appeals.

JETT BROS. DISTILLING CO., Appellant,

v.

CITY OF CARROLLTON, Appellee.

Agreement.

By agreement of parties the appellant is given an extension of ten days' time to prepare, print and file petition for rehearing herein.

WINSLOW & HOWE,
Attorney- for Appellant.
J. DONALDSON & SONS,
Attorney- for Appellee.

THE COMMONWEALTH OF KENTUCKY,
,The Court of Appeals, set:

I, R. W. Keenon, Clerk of the Court of Appeals, certify that the foregoing is a correct copy of the agreement filed in the above styled case as the same appears from the records and files of my office.

In testimony whereof I hereunto set my hand and affix my official seal. Done at the Capitol at Frankfort, this the 15th day of November, A. D. 1919.

[Seal Kentucky Court of Appeals.]

R. W. KEENON,
Clerk of Court of Appeals of Kentucky.

Office Supreme Court, U. S.
FILED
NOV 7 1919
JAMES D. MAHER,
CLERK

No. 108

SUPREME COURT OF THE UNITED STATES

JETT BROS. DISTILLING COMPANY, - Plaintiff in Error,

versus

CITY OF CARROLLTON, - - - Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

HELM BRUCE,
GEO. B. WINSLOW,
Attorneys for Plaintiff in Error.

WESTERFIELD-BOOTH CO., INCORPORATED, LOUISVILLE, KY.

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3. To assess one class of property for taxation at its full cash value, when other property within the jurisdiction of the taxing authority is uniformly and intentionally assessed at much less than its fair cash value is violative of the provisions of the Constitutions both of Kentucky and of the United States 11

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It would have been useles during any of the years involved in this cause for the taxpayer to have insisted before the State Board of Valuation and Assessment of Kentucky that the valuation of its property be reduced to the proportion of its value at which other property was assessed, for at that time it was the ruling of the Court of Appeals of Kentucky that this could not be done 14

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For a city to levy a tax upon property not within its territorial limits, or to levy a tax on account of property against one who is neither the owner nor in possession or control of the property, is to take property without due process of law, contrary to the Constitution of the United States . . 18

SUPREME COURT OF THE UNITED STATES

JETT BROS. DISTILLING COMPANY, *Plaintiff in Error,*

versus

CITY OF CARROLLTON, - - *Defendant in Error.*

BRIEF FOR PLAINTIFF IN ERROR.

This is a suit by the City of Carrollton against the Jett Bros. Distilling Company to recover taxes levied by the City upon whiskey which at one time, but not at the time of the levy, was in the possession of the Jett Bros. Distilling Company, which will hereafter be referred to simply as Jett Bros.

The circumstances of the levy were very unusual. The facts are substantially as follows:

The Jett Bros. Distilling Company, as indicated by its name, is a corporation engaged in the manufacture of whiskey. Its distillery and bonded warehouses are situated in the City of Carrollton, Kentucky, that City being one of the fourth class according to the classification of municipalities in that State. In 1907 Jett Bros. reported to the Auditor of Public Accounts of the State of Kentucky all of the whiskey which on September 1st was in its bonded

warehouse in Carrollton. The Auditor in turn, as required by law, laid these reports before the State Board of Valuation and Assessment; and that Board assessed the whiskey for the year 1907.

The City of Carrollton has a revenue system of its own under the Statute governing cities of the fourth class in Kentucky; and as a part of that system it has a City Assessor. This Assessor, conceiving it to be his duty to assess whiskey in a bonded warehouse in the City of Carrollton, as well as all other property in that City, assessed the whiskey in the bonded warehouses of Jett Bros. His assessment of this whiskey was at a much lower valuation than that of the State Board of Valuation and Assessment.

Subsequent to this assessment by the City Assessor, the City Council of Carrollton made a levy of a tax of seventy-five cents "on each one hundred dollars worth of taxable property in the City of Carrollton, as the same appears from the assessment and valuation made as of date April 1st, 1907, by the Assessor of said city and equalized by the Board of Equalization of the City." (Record, page 68.)

We ask the court to note carefully the language of this levy. It was not simply a levy in general terms of seventy-five cents on each one hundred dollars worth of property in the City of Carrollton; but it was a levy of seventy-five cents on each one hundred dollars worth of taxable property in that City "*as the same appears from the Assessment and Valu-*

ation as of date April 1st, 1907, *by the Assessor of said City and equalized by the Board of Equalization of the City.*"

The taxes under this levy were paid by Jett Bros. as they became due, every dollar of them. Under the law of Kentucky, taxes upon whiskey, whether they be State taxes, County taxes, or City taxes, are payable only as the whiskey, if in a bonded warehouse, is withdrawn from the warehouse. And all of the whiskey involved in this case had been tax-paid and withdrawn from the bonded warehouses of Jett Bros. prior to the levy of 1916 of which we are about to speak.

Thus far we have spoken of the year 1907 only. Exactly the same steps were taken in the years 1908, 1909, 1910, 1911, 1912, 1913, 1914, and 1915.

In the year 1916, in July of that year, the City of Carrollton, conceiving that its Assessor had no authority to assess whiskey in a bonded warehouse, and that the State Board of Valuation and Assessment is the only assessing power having jurisdiction to assess such whiskey (a proposition of law which the Court of Appeals of Kentucky has upheld), made an entirely new levy for the year 1907. In other words, the City of Carrollton *in 1916* made what it treated as, and which in fact was, an entirely new and independent levy of taxes *for the year 1907*. Its levy, this time, was of 75c on each $100 worth of taxable property in the City of Carrollton, as the

same appears from the assessment and valuation made for said City for the year 1907. The court will note the difference between the language of this levy of 1916 and the original levy of 1907. The language of the levy of 1916 is that the levy is of 75c on each one hundred dollars worth of property in the City of Carrollton as the same appears from the assessment and valuation made for said City for the year 1907, but without saying *by whom* made. Whereas, the language of the levy of 1907 was that it is a levy of 75c on each one hundred dollars worth of taxable property in the City of Carrollton "as the same appears from the assessment and valuation made as of date April 1, 1907, *by the Assessor of said City* as equalized by the Board of Valuation of the City." As we have heretofore said, the taxes accruing under the levy exactly as made in 1907, that is to say, a tax of 75c on each one hundred dollars worth of property in the City as the same appeared from the assessment and valuation made by the City Assessor and equalized by the City Board of Equalization, had been paid in full.

By the time this assessment of 1916, purporting, however, to be for the year 1907, was made, all of the whiskey covered by this 1916 assessment had been withdrawn from the warehouse of Jett Brothers and had ceased to be either the property or in the possession of Jett Brothers, and had doubtless gone to the four quarters of the globe, and probably had been, to a large extent, consumed. There is neither

allegation nor proof in this record, nor does the fact appear in any way whatever, that any of the whiskey attempted to be covered by this belated levy of 1916, *was within the limits of the City of Carrollton at the time this levy was made,* and therefore it does not appear that at this time it was within the jurisdictional power of the City of Carrollton to levy a tax upon any of that whiskey.

The City Council of Carrollton made a levy for each of the years between 1907 and 1916 similar in character to the levy to which we have just referred made for the year 1907 making the levy for each of the other years at the same time that it made the levy for 1907. Immediately thereafter the City made a demand upon Jett Brothers for the payment of taxes based upon each of those levies for the years named. Jett Brothers, of course, declined to pay; and thereupon this suit was brought in August, 1916, for taxes based upon those several levies *made in July, 1916,* for each of the years just mentioned.

The City in its petition did not mention the payment of taxes made under the original levies of 1907, etc., and gave no credit in its petition for any of those payments, but demanded the full taxes based upon the levies made in July, 1916, for the several years. The original petition is very long, covering nearly sixty pages of the printed record; and there are also lengthy amended petitions in the record. The Jett Brothers answered, and the answer was, of course, necessarily long. It denied the material allegations

of the petition and also pleaded certain affirmative defenses. The nature of the traverse is shown by stipulation (Rec., 64). It affirmatively pleaded the original levies of 1907, 1908, etc., and the payment in full of the taxes which accrued under those levies. It also pleaded that all of the whiskey upon which the taxes were sought to be levied under the levies of 1916, had at that time been removed from the warehouse of Jett Brothers, and was no longer its property, or in its possession, or under its control, and that if it were required to pay taxes on this whiskey at that time, it would have no possible means of protecting itself, as it could have done against the payment of any tax levied upon the whiskey while in its possession. (Rec. pp. 67-70.)

The answer also specifically pleaded in the 19th paragraph that it had during all the years covered by the amended petition been the rule, custom, habit, practice and system in the City of Carrollton to assess and cause to be assessed the real estate in said City at an average of not more than forty per cent of its fair cash value, and to assess and caused to be assessed personal property in said City at an average of not more than thirty per cent of its fair cash value, although defendant, in fact, had never given in its property for taxation in the City of Carrollton at less than seventy per cent of its cash value, and for the last five years had given the same in at eighty per cent of its fair cash value. But that the assessment made by the State Board of Valuation and Assessment, set out in plaintiff's petition,

and upon which the tax therein sought to be recovered was based, was made at *one hundred per cent* of the fair cash value of the whiskey covered thereby, and that the attempt of the plaintiff to collect the sum set out in the petition under such circumstances was an attempt made in violation of defendant's rights, both under the Constitution of the State of Kentucky, and under the Fourteenth Amendment to the Constitution of the United States. (Record, p. 71.)

Defendant made other defenses, such as the Statute of Limitations, which involved no Federal question.

The court gave judgment for plaintiff for the full amount claimed under the levy of 1916 for the preceding years above set forth, after, however, giving credit to defendant for the amount it had actually paid under the original levies made in 1907 and the subsequent respective years. From this judgment an appeal was taken by Jett Brothers to the Court of Appeals of Kentucky, where the judgment was affirmed. A petition for rehearing was filed (Rec., 130), but was overruled (178 Ky. 566). And thereupon, defendant having drawn in question the validity of an authority exercised under the State of Kentucky on the ground of its being repugnant to the Constitution of the United States and the decision of the Kentucky Court of Appeals being in favor of its validity, a writ of error was allowed from this court to the Court of Appeals to review that decision.

ASSIGNMENT OF ERRORS.

Plaintiff in error, Jett Bros. Distilling Company, in the above entitled cause assigns as errors in the judgment of the Court of Appeals of Kentucky, herein complained of, the following, to-wit:

1. The court erred in upholding as valid the assessments for taxation of the property of the Jett Bros. Distilling Company, involved in this cause, it being shown that said property was thus assessed for taxation at 100% of its fair cash value; whereas all other property in the City of Carrollton, during the same period of time for which the assessment herein complained of was made, was uniformly and purposely assessed for taxation by the City of Carrollton at not exceeding 40% of its fair cash value; and in holding that the Jett Bros. Distilling Company was not by said assessment denied the equal protection of the laws, and that said assessment was not repugnant to the Fourteenth Amendment to the Constitution of the United States.

2. The court erred in holding that the levy by the City of Carrollton of taxes for certain past years against the Jett Bros. Distilling Company upon property not shown to have been in the City of Carrollton, or to belong to Jett Bros. Distilling Company, at the rate of said levy, and when it also appeared that levies by the City of Carrollton of taxes upon the same property had been made in each of said several past years against the Jett Bros. Distill-

ing Company, and that the taxes based on said past levies had been paid by the Jett Bros. Distilling Company to the City of Carrollton and received and retained as such by it, was valid, and was not repugnant to the Fourteenth Amendment to the Constitution of the United States, and especially to the part thereof forbidding any State to deprive any person of life, liberty, or property, without due process of law.

3. The court erred in holding that both the levy of taxes involved in this action, and the assessment of property involved in this action, which levy and assessment were the basis of the taxes claimed by plaintiff, the City of Carrollton herein, were valid, and that neither the levy nor the assessment was repugnant to the Fourteenth Amendment to the Constitution of the United States.

4. The court erred in holding that the Jett Bros. Distilling Company by failing to appear before the Board of Valuation and Assessment, after receiving notice of the valuation fixed by it, and by paying State and County taxes (but not City of Carrollton taxes) based upon said assessment had lost its right to complain of said assessment as a basis for taxation by the City of Carrollton; said Court of Appeals having held in Louisville Railway Company vs. Commonwealth, 105 Ky. 710, decided in 1899, prior to any of the years involved herein, that the Board of Valuation and Assessment, in assessing property for taxation, had no right or power to take into considera-

tion the fact that other taxing officers or tribunals uniformly and purposely assessed all property for taxation at less than its fair cash value, which ruling by the Court of Appeals of Kentucky was never changed until after the Supreme Court of the United States ruled otherwise in 1917 in Greene vs. Louisville & Interurban Ry. Co., 244 U. S. 499, and Louisville & Nashville Railroad Co. vs. Green, 244 U. S. 522.

5. The court erred in affirming the judgment of the Carroll Circuit Court, which in effect commanded the Jett Bros. Distilling Company to pay certain taxes to the City of Carrollton based upon a levy of taxes by said City, and an assessment of property by the Board of Valuation and Assessment of the State of Kentucky, which said levy and assessment were both repugnant to the Fourteenth Amendment to the Constitution of the United States.

Wherefore, plaintiff in error prays that the judgment of the Court of Appeals of Kentucky be reversed. (Rec. 147.)

ARGUMENT.

I.

The fact as to the unlawful and unconstitutional discrimination against this class of property, to-wit, whiskey in bonded warehouses in the City of Carrollton, if the assessment of that whiskey by the Board of Valuation and Assessment at 100% of its fair cash value is allowed to stand, and be the basis for the recovery of taxes, whereas, all other property in the City of Carrollton was assessed at only thirty per cent of its fair cash value, is admitted in the record; because it is alleged in Paragraph 19 of the answer, and to that paragraph a demurrer was filed and sustained. And that this constitutes illegal taxation is settled by the decision of this court in the case of Greene vs. Louisville & Interurban Railroad Co., 244 U. S. 499. It is true that in the case just mentioned, the point actually decided by the court was that such procedure is violative of rights protected by the Constitution of Kentucky; but we submit that the reasoning of the court in that case leads inevitably to the further conclusion that such procedure is violative of the Fourteenth Amendment to the Constitution of the United States. And it was so held in Raymond vs. Chicago Traction Co., 207 U. S. 20.

The reasoning of the Court of Appeals of Kentucky in the present case on this question is peculiar. It is in the following language, which is all the court says on the subject, to-wit:

"It is further asserted that the recent cases of Greene vs. Louisville & Interurban Ry. Co. and Greene vs. Louisville Ry. Co., decided by the Supreme Court of the United States, and reported in 37 Sup. Ct. Rep. 673, uproot the contention that the act is constitutional and hold that the State Board of Valuation and the City Assessor and Board of Supervisors, acting independently of each other and fixing different valuations on the same property, work a discrimination inimical both to the Federal and State Constitutions. In this, however, appellant is in error. It must be borne in mind that complaint is only made of the Assessment. The warehouseman has his remedy in case of an excessive or unfair valuation, by appearing before the Board of Valuation and Assessment at the time he received notice of the valuation fixed, and there make complaint as provided in Section 4107 of the Statutes. This Appellant failed to do, and acquiesced in the assessment by paying taxes both to the County and the State upon the valuation fixed by the State Board. This being true, it cannot be heard to complain now." (Record, p. 129.)

1. This reasoning seems to us very peculiar. In the first place, it must be remembered that what is now being complained of is the application of the assessment made by the State Board of Valuation and Assessment to *City taxes* levied by the City of Carrollton. How then can the fact that Jett Bros. paid State taxes and County taxes based on the assessment of the State Board, estop them from complaining of City taxes based on that assessment? Whatever the facts may be, there is nothing in this

record to show that property in the State of Kentucky generally, or property in the County of Carroll generally, is assessed at less than its fair cash value. There is nothing in the record to show that if Jett Bros. had sought to complain of the State taxes and the County taxes demanded of them, based on the assessment of the State Board of Valuation and Assessment, they would have had any just ground of complaint. But the allegation is that *in the City of Carrollton,* property within the jurisdiction of that City is *assessed for purposes of taxation by that City* at not over 30% of its fair cash value. This is the only discrimination alleged and is the only discrimination complained of by the defendant, Jett Bros. It is therefore impossible to understand how the payment by Jett Bros. of State taxes and County taxes, based on the assessment of the State Board, can estop them from complaining of City taxes of the City of Carrollton, based on the assessment of that Board.

2. Again, the law looks at the substance of things and not at shadows. Its purpose is to do substantial justice according to actual facts. Let us then carry ourselves back to the year 1907 and see what would have been the attitude of the parties if Jett Bros. had done what the Court of Appeals suggests it ought to have done, namely, had gone before the State Board of Valuation and Assessment, as provided in Section 4107 of the Kentucky Statutes, and had made complaint before that Board of the valuation, and had

asked a change of valuation, *so far as the valuation was to be taken as the basis of taxation by the City of Carrollton.* What would have been the result? It would have been sufficient for the State Board to say to Jett Bros., "The tax levied upon your whiskey by the City of Carrollton is only a tax of 75c on the $100 worth of property *as fixed by the City Assessor* of Carrollton, and the Board of Equalization of that City. Therefore, the question of the value which we have placed upon your property for that year cannot affect the tax you have to pay to the City of Carrollton, as the levy of that City by its own terms limits the tax to 75c on the $100 of value as fixed by the City Assessor of that City."

If Jett Bros. had gone before the State Board with its complaint as suggested, and the State Board had made that answer to Jett Bros., we cannot conceive of anything Jett Bros. could have said in response. It undoubtedly is true that the levy of the City for the year 1907 was limited as just indicated, and, that being true, it is not easy to see how it was material what value may have been placed upon property by the State Board of Valuation and Assessment.

3. But there is another most material consideration in this connection, and to this we ask the court's most careful attention. If Jett Bros. had gone before the State Board of Valuation and Assessment in 1907, as suggested by the Court of Appeals it could have done, and had insisted that their property

should have been assessed at not over 30% of its fair cash value, because all other property at that time was so assessed for taxation by the City of Carrollton, the State Board would immediately have answered that its duty under the Constitution was to assess property at its full value, estimated at the price it would bring at a fair voluntary sale, *and that the Court of Appeals of Kentucky, the highest court of the State, which determines the law of the State, had expressly held that the fact that assessors and other assessing tribunals generally assessed property at only a small percentage of its fair cash value, was no justification for the State Board of Valuation and Assessment departing from its constitutionally prescribed duty and for its disregarding the law because other assessing officers had so done.* And this would have been a truthful statement of what the Court of Appeals had held.

This exact question came before the Court of Appeals of Kentucky and was decided by it in the year 1899, in the case of Louisville Ry. Co. vs. Commonwealth, 105 Ky. 710. In that case the Louisville Railway Co. sought to enjoin the collection of taxes against it based upon a valuation of its property fixed by the Board of Valuation and Assessment at its actual fair cash value, the ground of the objection being that property generally throughout the State was uniformly assessed at not more than a small fraction of its fair cash value; that it, therefore, was unlawful and unconstitutional to assess the

tion, was assessed for City taxes at not over 30% of its fair cash value; and that to enforce such a tax would be to deny to defendant the equal protection of the laws, and therefore to violate the Fourteenth Amendment to the Constitution of the United States; and that for this reason the judgment of the Court of Appeals should be reversed.

II.

There is another reason why the tax sought to be recovered in this case is not a valid tax. At the time the levy of 1907 was made, the whiskey involved in this action was either owned by or was in possession of Jett Bros., and was within the territorial limits of the City of Carrollton which levied the tax. It was, therefore, a subject of taxation by the City of Carrollton and the tax was properly assessable against Jett Bros., because they either owned the whiskey or had possession of it, and must therefore pay the tax, and if the property did not belong to them, could recover the tax from the real owner of the property when he should withdraw it; and under the Statutes of Kentucky they were given a lien upon the whiskey to secure the repayment to them of any tax they might pay for the owner. But in the year 1916, when the levies of that year were made, and which purported to be for the preceding years, 1907, 1908, etc., the record shows affirmatively both in the petition and in the answer, that the whiskey was *no longer*

the property of Jett Bros. and was *no longer in the possession of Jett Bros.* And the record fails to show by either allegation or proof, or in any way, that the property was even *in the City of Carrollton.* Of course, it is indisputably true that if the property was not in the City of Carrollton at the time it sought to levy a tax upon the property, it was not within the constitutional power of the City of Carrollton to tax it. And we repeat that the City of Carrollton is the plaintiff in this case, and is required to show that the tax which it seeks to recover is a valid tax. And we submit, therefore, that it was required to state in its petition that this property was within the City of Carrollton, when the tax levy of 1916 was made; and this it failed to do. It needs no citation of authority to show that for a city to attempt to tax property which, at the time of the levy, is not within the limits of the city, is to attempt to take property without due process of law, and is violative of the Fourteenth Amendment of the Constitution of the United States.

But furthermore, even if it appeared that the whiskey in question was actually still within the territorial limits of the City of Carrollton when this levy was made in 1916, it undoubtedly appears both in the petition and in the answer that the whiskey was *no longer either the property of, or in the possession of, Jett Brothers;* and we submit that the City had no constitutional power in 1916 to assess taxes against Jett Bros. simply on account of property that had belonged to them, or that had been in

their possession, back in the year 1907, but which was no longer their property or in their possession; and that for it to attempt to do so is to attempt to take the property of Jett Bros. without due process of law, contrary to the Fourteenth Amendment of the Federal Constitution. As heretofore stated, the Statutes of Kentucky which provide for levying a tax against the person who may be in possession of property, to-wit, whiskey, gives the person who is thus required to pay the tax a lien upon the property in his possession to secure the repayment to him of the tax by the real owner. (Ky. Stats., Sec. 4106.) But when the property has once passed from the possession of the person, then for a taxing authority subsequently to levy a tax against that person, on account of property formerly in his possession, but no longer in his possession, and when he is no longer able to protect himself and to enforce a lien upon the property as against the real owner, is taking his property without due process of law.

It is said that Jett Bros. ought to have known the law back in 1907, and ought to have known that the City Assessor of Carrollton had no power to assess whiskey in bond and that the State Board of Valuation and Assessment was the proper assessing tribunal, and, therefore, should not have allowed the whiskey to go out of their possession without the payment of the proper amount of tax, based on the assessment of the State Board. But a complete answer to this proposition lies in the fact heretofore stated, that the levy by the City of Carrollton was only a levy of 75c

on the $100 worth of property *as valued by the City Assessor and the City Board of Equalization.* And that tax, thus described and imposed by that levy, was fully paid before any of the whiskey was allowed to go out of the possession of Jett Bros. They had no power to *make the City of Carrollton levy a greater tax than it did.* If the City of Carrollton chose to limit its own levy to 75c on the $100 of value as fixed by its City Assessor, which was less of a levy than if it had made a levy of 75c on the $100 of value as fixed by the State Board, or levy of 75c on the $100 of value, leaving to the law to determine which was the proper Board, the City of Carrollton had the right to do this; that is to say, had the right to make the smaller levy, and *this it did do;* and it was neither the duty, nor was it the right, nor was it within the power of Jett Bros. to go to the City Council of Carrollton and say to the Council, "You ought to have levied a greater amount, you ought not to have limited your levy as you have done."

We therefore submit that it is no answer to Jett Bros.' present contention to say that they ought to have known the law in 1907, and ought not to have allowed whiskey to go out of their possession until a tax upon it had been paid, based on the assessment by the State Board of Valuation and Assessment; because the actual levy made by the City of Carrollton was, as heretofore described, and that levy has been fully paid; and it was not the duty of Jett Bros. to say to the City Council in 1907 that it ought to make a greater levy than it had made.

It is not irrelevant to suggest that unless Jett Bros. could have treated the levy of taxes by the City of Carrollton in 1907 as being what it said on its face, and could therefore have treated it as a valid levy and acted pursuant to it, then Jett Bros. would never have been safe at any time within any number of years in allowing whiskey in its possession to be tax-paid and removed from its bonded warehouse. If the City of Carrollton could go back in 1916 and make an entirely new levy for the year 1907 and compel Jett Bros. in 1916 to pay a tax based on this new levy for the year 1907, it could, with equal right, go back, in the year 1916, to the year 1900, or any preceding year, or it could hereafter at any time in any year go back to the year 1907 and make another levy for that year and insist that Jett Bros. pay a tax on whiskey which was in their possession in 1907, although it may long years prior to the latter levy have gone out of their possession and beyond their control, so that they would be powerless to protect themselves against such a tax by collecting same from the real owner of the whiskey. We submit that this is taking property without due process of law, contrary to the Fourteenth Amendment to the Federal Constitution, and for this reason also the judgment should be reversed.

Wherefore we ask that the judgment of the Court of Appeals of Kentucky be reversed.

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And likewise where it is evident from the record, and according to the practice of a State Court, that a federal question made in a petition for a rehearing must have been decided by the court in passing upon the question, this is sufficient to give jurisdiction to this court 18

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919.

No. 108.

JETT BROTHERS DISTILLING CO., - *Plaintiff in Error,*

vs.

CITY OF CARROLLTON, - - - *Defendant in Error.*

REPLY BRIEF FOR PLAINTIFF IN ERROR.

MOTION TO DISMISS.

1. The defendant in error has moved to dismiss the writ of error, and the first ground for the motion is that no petition or application for a writ of error was filed.

The Statutes regulating the practice in this court, so far as we have been able to find, make no reference to a petition for writ of error. On the contrary, §997 of the United States Revised Statutes (§1653 United States Compiled Statutes) provides what shall be returned with the writ of error, and it does not specify a petition for the writ of error. And this court has held in many cases that a petition for writ of error forms no part of the record upon which this court acts (Leeper vs. Texas, 139 U. S. 467, citing preced-

ing decisions). One of the cases cited in Leeper vs. Texas is Butler vs. Gage, 138 U. S. 55, in which the court said:

> "It is essential to the exercise by this court of revisory jurisdiction over the final judgments or decrees of the courts of the states that the writ of error should be allowed either by a justice of this court, or by the proper judge of the State court, after ascertaining *by an examination of the record* that a question cognizable here was made and decided in the State court, and that such allowance was justified" (Page 55.).

And again in the same case the court said:

> "And it may be remarked in the outset, that the petition for a writ of error forms no part of the record upon which action here is taken" (Page 56).

The only reference we have been able to find to a petition for a writ of error in any regulation upon this subject is in the 35th rule of this court on the subject of "Assignment of Errors", which seems to imply that a petition for writ of error will be filed, although it makes no express requirement to that effect.

We submit, however, that manifestly, though it may be a practice to file a petition for a writ of error, it is not jurisdictional and not essential. And in the only cases we have been able to find on the subject, being two cases respectively from the 9th and 5th Circuit Courts of Appeal, it has been so held.

> Alaska, etc., Mining Co. v. Keating, 116 Fed. 564;
> Louisville Trust Co. v. Stockton, 72 Fed. 1.

2. As to the second ground of the motion to dismiss, to-wit, that the writ of error was not allowed within three months after the entry of the judgment complained of, this is simply based upon an error in the record, which has been or will be corrected before the case is heard. The ground of the motion is that the judgment was entered December 21, 1918, and the writ not allowed until April 19, 1919. Counsel note the fact that a petition for rehearing was filed and was not overruled until March 22, 1919; so that the writ was allowed within less than thirty days after the overruling of the petition for rehearing. But counsel say that the petition for rehearing itself was filed out of time and that there was no order extending the time for the filing of it. In fact, however, such an order was entered in the Court of Appeals of Kentucky on January 18, 1919, giving ten days' additional time to file the petition. And as the time otherwise would have expired, as shown by the brief of the defendant in error, on January 25, 1919, the extension of ten days carried the time to February 3, 1919; and the petition for rehearing was filed on January 29, 1919.

MERITS.

I.

We desire to reply to only one point in the brief for defendant in error on the merits.

Based on the case of *Western Union Telegraph Co.* v. *Missouri,* 190 U. S. 412, on writ of error to the Supreme Court of Missouri, counsel, as we understand them, contend that Jett Brothers had no right by answer in this suit of the City of Carrollton to plead as a defense that the assessment was void; and seem to contend that the attack upon the assessment could only have been made "*by a direct attack in equity.*"

This may be the law in Missouri in which that case arose and according to whose rules of practice it was governed; but it is not the law in Kentucky in which the present case arose.

In the first place, it will be observed that the Court of Appeals of Kentucky in the present case does not base its judgment upon any such proposition. The court does hold that Jett Brothers should have gone with their complaint before the Board of Valuation and Assessment itself; a proposition to which we have fully responded in our original brief. But the court does not intimate, so far as *judicial* procedure is concerned, that an attack in the courts could have been made upon the assessment by a "direct attack in equity," but not by an answer in the suit based upon the assessment. And we are very confident that

no authority to sustain such a proposition can be found among the decisions of the Court of Appeals of Kentucky; but all of its decisions, so far as we are familiar with them, show that a denial of the validity of an assessment can be shown just as well in a suit for a tax based upon the assessment as by a direct attack in equity.

In the first place, it should be remembered that by the Code of Practice in Kentucky an equitable defense can be made in a common law action. §113 of the Civil Code of Practice provides:

> "A pleading may contain statements of as many causes of action, legal or equitable, *and of as many matters of estoppel and of avoidance, legal or equitable,* total or partial; and may make as many traverses; and may present as many demurrers as there may be grounds for in behalf of the pleader" (Civil Code of Kentucky, §113, Subsection 2).

And §11 of the Code expressly recognizes that there may be both legal and equitable defenses to a common law action and provides the order in which they shall be tried, saying:

> "§11. *In an ordinary action properly commenced as such—*
> "3. If there be an issue which was not cognizable in chancery, and an issue which was exclusively cognizable in chancery, before the said day (August 1, 1851), the plaintiff may have the former issue tried before the latter is disposed of."

So far, therefore, as concerns the distinction between law and equity in making the attack upon the assessment, this is abolished by the Code of Practice in Kentucky, and the matter would seem to come down to a question of whether this attack on the assessment can be made by way of *defense* to an action to collect the tax based on the assessment, or whether the attack must be made by the taxpayer as a *plaintiff*. And an examination of the decisions of the Court of Appeals of Kentucky will show that absolutely no distinction along this line has been drawn by that court.

It is undoubtedly the law of Kentucky that a taxpayer cannot complain of the assessment by a duly authorized assessing tribunal simply on the ground that his property has been assessed too high. It is perfectly well settled that the assessment cannot be disregarded unless the assessing officer or tribunal has proceeded either (1) fraudulently or (2) according to an improper method. And this principle has been announced both in cases where the taxing authorities were the plaintiffs seeking to collect a tax, and where the taxpayer was the plaintiff seeking to enjoin the collection of a tax.

The very first case in which the principle is announced was a case in which the *Commonwealth was plaintiff* seeking to collect a tax and the taxpayer was a defendant, objecting to an assessment, viz.: Henderson Bridge Co. v. Commonwealth, 99 Ky. 623. In that case, as shown by the opinion of the court (Page

634), the defendant, Bridge Company, insisted that the assessment of its franchise was "too high and that the method of ascertainment adopted was erroneous." The court did not hold that it was not allowable to make this kind of a defense, but on the contrary entered into a very elaborate discussion of the Statute and pertinent authorities, by way of showing that the method pursued by the Board of Valuation and Assessment was a proper and lawful method. The opinion on this subject is very full, and in conclusion, by way of laying down a rule for future cases, the court said this:

> "It should be further said that the findings of this Board of Valuation and Assessment partake of a judicial nature. The defendant had its day in court. It did appear on notice before that Board and on evidence made its defense. And on this hearing that Board rendered its decision in fixing the value of the franchise of defendant, granted by authority of the State of Kentucky; and this finding, if not conclusive, is entitled to a very high degree of consideration and authority, and it should not be lightly set aside or disregarded by the courts, *unless the Board proceeded upon an erroneous principle or adopted an improper mode or manner of estimating the value of the franchise, or unless fraud is charged and shown to exist*" (Page 645).

As heretofore stated, the court in that case concluded that the Board had not proceeded according to an improper method, and, as no fraud was charged, the court upheld the assessment and held that the Commonwealth was entitled to recover the tax based

upon it. But so far from stating that it was not open to the defendant to make an attack upon the assessment by way of defense, the court held just the contrary. And this case has been often cited since as authority for the proposition laid down in it in the language heretofore quoted.

Thus in the case of *Hager* v. *American Surety Co.,* 121 Ky. 791, where the parties were reversed, that is to say, where the taxpayer was the plaintiff, the court, citing the Henderson Bridge case and quoting from it in the language quoted above, held in that case that the Board had adopted an erroneous method in fixing the value of the American Surety Company's franchise, and accordingly affirmed the judgment of the lower court which had enjoined the collection of a tax attempted to be imposed on the basis of the Board's assessment.

And in the case of *Louisville & Nashville Railroad Co.* v. *Greene,* 244 U. S. 522, the same rule was acted upon in a case which originated in the Federal District Court of Kentucky, the case being one which this court described as a case "seeking to restrain the taking of any steps toward enforcing State and local taxes upon the basis of an assessment of the franchise of the company * * * upon the ground that the assessment was unlawful and not in accordance with the Statute, was the result of an abuse of power," etc. (244 U. S. 525.)

Again there have been other cases in Kentucky where the taxing authorities have been the plaintiffs

seeking to collect taxes based upon an assessment claimed to be improper, and where the right of the defendant to attack or deny the validity of the assessment was treated as an unquestioned right.

Thus in *Louisville Tank Line* v. *Commonwealth,* 123 Ky. 81, the Commonwealth sued to recover a tax; and while the court in that case held that the assessment was valid, it said this:

> "That the assessing officers of the State took such other incidental steps as were necessary to perfect the assessment, is a fact that is presumed. Acting as they did under their oaths of office, every official act when completed raises a presumption in law that every incidental step necessary to its perfection has been taken by them. In a proceeding to recover the tax from a person or corporation assessed, if the issue is presented whether any such step was taken, in view of this presumption of law in favor of the completeness and correctness of the official action, the burden is shifted to the taxpayer to prove it was not taken. *Of course this presumption makes only a prima facie case for the State. It may be rebutted,* and may be sustained by further evidence if it is rebutted, and until it is rebutted the presumption of the law is sufficient to sustain the allegation of the petition of the State that such steps were taken" (Page 88).

It is also a perfectly well-settled principle of law in Kentucky, although the proposition is denied in some States, that a suit in equity will lie to enjoin the collection of an illegal tax, and that too, not where the suit is against an assessing officer to compel him to vacate or modify an assessment, but where it is

against a *collecting* officer in a suit to which the assessing officer is not even a party. This was the nature of the case of *Negley* v. *Henderson Bridge Co.*, 107 Ky. 414, which was a suit to enjoin a sheriff from collecting a tax based upon an unlawful assessment, in the course of which opinion the court said:

> "This Court has, in a number of cases, held that 'a mere opinion on the part of a taxpayer that an excessive valuation has been placed upon his property furnished no ground for enjoining the collection of taxes due to either the State or County' (Citing authorities). But the right to have an injunction to restrain the collection of an illegal and void tax has long been recognized in this State, upon the ground of the inadequacy of the remedy at law" (Page 418).

We are wholly unable to understand how it can be true that a taxpayer can enjoin a collecting officer from collecting a tax based on an illegal assessment, when the assessing officer is not even a party to the suit, but that if this same collecting officer has *power to sue* for the tax, and *does sue* for the tax, the defendant will then not be allowed to defend the suit on the ground of illegality of the tax. The two propositions are utterly inconsistent in principle.

As an illustration of the situation, take the facts of the case at bar. The levies upon which this action was based were made on the 7th and 13th days of July, 1916 (Rec. 6). No demand was made upon Jett Bros. for the payment of these taxes until long after the filing of this suit (Rec. 120, Answers of

witness 22 and 23). Jett Bros. supposed they had paid their taxes in the years 1907, 1908, etc. No demand was made upon them under the levies of 1916, except as the suit itself was a demand, and that was brought on August 15, 1916, just one month and two days after the levy of July 13th. It is indisputably true that if Jett Brothers had quickly gotten into court with a suit for injunction against the City of Carrollton to prevent the collection of this tax on the ground that it was illegal, the suit could have been maintained under the Kentucky authorities. Is it possible then, that because the City of Carrollton promptly brought suit itself to collect the tax based on the assessment, without even waiting to make a demand for payment, Jett Brothers cannot defend on the ground of the illegality of the assessment? If this should be true, then it becomes simply a race between the taxing authorities and the citizen as to which shall get to the court house first. And this is not the law in Kentucky.

We may further say that as a general proposition suits to collect taxes are not authorized by the law of Kentucky. Only in exceptional cases is a suit authorized to collect a State or a County tax. Municipalities are, however, frequently authorized to sue for municipal taxes. And the Court of Appeals of Kentucky has held in this line of cases that it is necessary for the plaintiff to allege the taking of every step necessary to show that the tax sought to be collected is a valid tax.

Thus in McArthur v. City of Dayton, 12 Ky. Opinions, 297, the Court of Appeals said:

> "In order to recover the amount of a tax imposed, where the statute gives the court jurisdiction it is essential, as has been often decided by this court, to aver and show a compliance with every duty necessary to the imposition of such a burden. The power of the general council to impose the tax must not only be alleged, but the manner in which it was imposed, viz.: by a vote of the general council in the manner required by the act, the assessment of the property, the notice of the meeting of the Board of Equalization—all such prerequisites must be alleged in order to show that the power conferred has been exercised in accordance with the charter authorizing it" (Citing Ormsby v. City of Louisville, 79 Ky. 197).

And what plaintiff must allege defendant can deny or avoid.

We submit, therefore, that according to the practice in Kentucky, it is permissible for a defendant, when sued for the collection of a tax based upon a certain assessment, to show that the assessment was illegal and the tax therefore also illegal and non-collectible. And as said before, the Court of Appeals in this very case does not deny that proposition.

II.

The question may be raised as to whether or not the point was made in the State court in proper time that the enforcement of the tax in question would be to deprive Jett Brothers of their property *without*

due process of law, contrary to the Federal Constitution, being the *second point* discussed in the original brief.

It does seem to be true that the record fails to show that this point was made prior to the filing of the petition for a rehearing; although this petition did distinctly make it (Rec. 130, 135). The *facts* upon which the proposition is based are very clearly and distinctly shown in the record of the case in the Circuit Court. It is specifically pleaded in paragraph 18 of the answer that prior to July 7, 1916 (the date of the levies in question), all of the whiskey, for the tax on which plaintiff sues, had been removed from the custody of defendant "from four months to ten years prior to the making of said alleged levies of the tax" (Rec. 70). And the same fact is again pleaded in paragraph 20, coupled with the statement that to require plaintiff to pay this tax levied after the whiskey had been removed from its possession "is both inequitable and unconscionable" (Rec. 71, 72). It is true, however, that neither the 18th nor the 20th paragraphs, just mentioned, specifically refers to the Constitution of the United States, although paragraph 19, which refers to the *inequality* of the assessments as between this whiskey and other property in Carrollton, does specifically refer to and rely upon the Federal Constitution.

The *facts* to support the point, to-wit, that the collection of the tax would be to deprive defendant of its property without due process of law, contrary

to the Federal Constitution, having been thus specifically pleaded, the record does show, as said above, that in a petition for a rehearing the point was specifically made that to collect this tax would be to deprive defendant of its property without due process of law, contrary to the provisions of the Fourteenth Amendment to the Federal Constitution (Rec. 135).

We are aware that this court has held as a general proposition, that it is too late to raise a Federal question for the first time in a petition for a rehearing, although this is not an absolute rule without exception, for the court has also held that if the State court considers and decides the Federal question, although raised for the first time by a petition for rehearing, this is sufficient to give this court jurisdiction (Leigh v. Green, 193 U. S. 79; McKay v. Kalyton, 204 U. S. 458).

It seems to us it should be sufficient to give this court jurisdiction if it be shown that the State court *must have decided* the Federal question raised by the petition for rehearing, even though it does not expressly say so. This court has long since, and in many cases, settled the proposition that where a Federal question is distinctly raised in the court of original jurisdiction, and where the highest court of the State must have decided it in order to dispose of the case as it did, although not expressly saying so, this is sufficient to give jurisdiction to this court (Steines v. Franklin County, 14 Wall. 15, 20, 21). And so it seems to us, if it appears that, although a particular

Federal question was raised for the first time on a petition for a rehearing, yet the State court *must have decided it* in overruling the petition for a rehearing, even though it may not expressly say so, this should be sufficient to give this court jurisdiction.

We have endeavored to find from the opinions of this court, establishing the general proposition that it is too late to raise a Federal question for the first time by a petition for a rehearing, what is the basis or reason of that ruling. And the only opinion we have been able to find giving a reason for the ruling is in *Texas & Pacific Ry. Co.* v. *Southern Pacific Co.*, 137 U. S. 48, in which the court by Mr. Chief Justice Fuller, after stating the Federal questions sought to be raised in this case, says:

> "But it does not appear that either of these propositions was presented to the trial court in any way, or advanced in the Supreme Court, until urged in the petition for a rehearing. The title, right, privilege or immunity was not specially set up or claimed at the proper time and in the proper way. It is true that under the law of Louisiana a judgment of the Supreme Court does not become final until after six judicial days from the rendering of the judgment have elapsed, within which time a dissatisfied party may apply for a new hearing of the cause, *but it does not follow that new grounds for decision will be allowed to be presented, or will be considered on such application, and the general rule is otherwise.*" (p. 53.)

As said above, this is the only reason we have been able to find in the opinions of this court for the rule

that the raising of a Federal question for the first time in a petition for a rehearing is too late; the reason being that the general rule is that a court will not consider *"new grounds for decision"* presented for the first time by a petition for a rehearing, and that in the case before the court it did not appear that the rule governing the practice of the court, whose decision was then under consideration, was other than the general rule. Therefore it did not necessarily appear that the State court had considered the Federal question at all.

In Kentucky, however, it certainly is the rule that a new ground of decision may be presented for the first time by a petition for a rehearing. Of course the *facts* upon which this new ground for decision is based must appear in the record as made up in the lower court; but if these facts do thus appear, then, even though a party may fail to make a particular point in the argument before the Court of Appeals, yet if he makes his point by a petition for a rehearing, the court does consider it, and if in the opinion of the Court of Appeals the point is well taken, the court will set aside its former ruling and make a different ruling.

We cannot quote to the court any statute or any written rule of court on this subject, but the opinions of the Court of Appeals show that such is the practice of the court beyond any possible question.

The latest case we call to mind illustrating this practice is *Elsey* v. *Peoples Bank of Bardwell,* 168

Ky. 701, quite a late case, where this practice of the court is very clearly shown. The case was one involving a principle of law applicable to negotiable instruments. The question was whether or not a surety on a note which had been discounted by the bank had been released from liability by conduct of the bank. The lower court held that the surety was not released and gave judgment for the bank on the note, whereupon the surety appealed. The Court of Appeals in an opinion reported in 166 Ky. 386 held that the surety was released and, accordingly, reversed the judgment, which had been in favor of the bank. On a petition for a rehearing, the bank, for the first time, called the court's attention to what is known in Kentucky as the "Negotiable Instruments Act," and insisted that according to the provisions of that Act the surety was not released, and the court, upon a consideration of the petition for a rehearing, concluded that this point was well taken and, accordingly, set aside its order of reversal and entered an order affirming the judgment of the lower court in favor of the bank. The situation and the way in which the case was presented are clearly shown by the first two paragraphs of the opinion above mentioned, as follows:

> "The facts of the case may be found in 166 Ky. 386.
>
> "The case was prepared and tried in the Circuit Court, and argued and decided upon appeal to this Court, upon the theory that the note was not a negotiable instrument, or was not affected

> by the Negotiable Instrument law of this State. *Neither party mentioned that Act in his brief;* and in their petition for a rehearing, counsel for appellee concede that the case was correctly decided in this court under the law of this State which antedated the Negotiable Instruments law.
>
> "*For the first time, however, it is suggested in the petition for a rehearing* that under the Negotiable Instruments law, J. L. Elsey, although he was a surety, is primarily liable upon the note sued on, and has not been discharged from that liability in any one of the five ways provided in Section 119 of the Act." (p. 702.)

The court then entered upon a consideration of the Negotiable Instruments Act, and concluded that under the provisions of that Act the surety had not been discharged, although the court in its first opinion had held that he had been. And in conclusion the court said:

> "The petition for a rehearing is granted; the former opinion is withdrawn and the judgment of the circuit court is affirmed" (p. 704).

We could doubtless find many cases of this kind among the opinions of the Court of Appeals of Kentucky, but it is not necessary to multiply cases on the subject. This one case, a late case, shows the practice so clearly that it is not necessary to multiply examples.

In other words, in conclusion, it is true in Kentucky that the Court of Appeals does consider new grounds for decision raised for the first time in a petition for a rehearing, and, therefore, when the

record shows that in a petition for a rehearing filed in that court, a certain Federal question based on facts shown by the record is specifically raised, it is the duty of the court to consider it, and if an order overruling the petition could not have been made without deciding that point adversely to the petitioner, then the record does show that the point was considered and decided by the State court, and ground is laid for the jurisdiction of this court.

As a matter of precaution, we should possibly add that by express provision of the Civil Code of Practice of Kentucky a judgment of the Court of Appeals does not become final until the expiration of thirty days from the rendering of a decision, and within this time, or within such extended time as the court may grant, a party has the absolute right to file a petition for rehearing. The quotations from the Code and rules of court made in the brief of counsel for defendant in error sufficiently show this without the necessity of quoting the Statutes and rules here.

Respectfully submitted,

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Attorneys for Plaintiff in Error.

Nov. 11, 1919.

ADDENDUM.

Since the preparation of the reply brief, and bearing upon the question of petitions for rehearing in the Court of Appeals of Kentucky, we have recalled that on March 15, 1884, the Court of Appeals adopted a rule as follows:

> "Petitions for rehearing must clearly show from the record that some question duly submitted by counsel, and decisive of the case, has been overlooked by the Court, *or that the decision is in conflict with a statute, or with a controlling decision to which the attention of the Court was not drawn, through neglect or inadvertence of counsel.* Any petition violative of this rule will not be presented to be filed, and if filed will be stricken from the record." (Prefix to 81 Ky. p. xiv. Our italics.)

This rule did not broaden, but, on the other hand, was intended to restrict, the right of petitioning for rehearing as the right had previously existed. It recognized the right of a party to file a petition for a rehearing and make the point, for example, that there was a statute controlling the matter *to which the Court's attention had not been called;* but it required counsel to admit that this was "through neglect or inadvertence of counsel." The main purpose of the rule was to prevent parties from *re-arguing questions which had been argued before,* and which the Court had considered, and to confine petitions for rehearing to points which had been overlooked,

(1) either by the Court in considering points which had been submitted, or (2) by counsel in failing to make points. The rule was never rigidly enforced. So far as concerned, points which had not been made "through neglect or inadvertence of counsel," it was easy for counsel to say that the matter had simply escaped their attention. And, as to the balance of the rule, counsel simply disregarded i t, and continued to file petitions for rehearing re-arguing matters theretofore argued. And in the course of a few years the rule was dropped; we do not recall just when. It is not a part of the rules today and it has not been for many years. It shows, however, that even under a rule manifestly intended to *restrict* the right to file petitions for rehearing, the Court recognized the right to make a new point not theretofore called to the attention of the Court. And as it expressly permitted a new point to be made, based upon *a statute* which had not been called to the Court's attention, of course the Court would have allowed a point to be made based upon the *Constitution,* either of the State or of the United States. In fact, the word "statute" in the rule would doubtless embrace a constitution.

Many years later, to-wit, in 1904, Judge O'Rear, then a member of the Court of Appeals, addressed the Bar Association of Kentucky on the subject of "The Petition for Rehearing, its Uses and Abuses," which is reported in the printed proceedings of the Kentucky State Bar Association for the year 1904. The above quoted rule of 1884 had then been re-

scinded or dropped from the rules of the Court, but Judge O'Rear in this address, calling attention to the old rule, strongly urged that its spirit ought to be observed by the bar, insisting that the Court was uselessly burdened by petitions for rehearing, simply re-arguing questions that had been argued and decided, and that such petitions ought properly to be *confined to new points.* In the course of his address he said this:

> "I submit to you that if the rule of 1834" (misprint for 1884) "were lived up to by the bar and enforced by the Court, every just and reasonable requirement of the office of that pleading would be met and subserved, *and we would escape having to try again cases which have been tried and decided.* Perhaps decided wrongly. Judges, after all, are but lawyers with a title, and if lawyers could be so frequently wrong, of course when they get to be judges, they will occasionally get wrong. But even though decided wrongly, they have been decided by that tribunal established in the experience of your people and in the form best calculated to bring the best results. In the interest of the State and the law, and the dignity of the Court, I appeal to you for an observance of that old rule. The petition ought not to be filed *unless it presents a new point* that is decisive of the case. The Court ought not to sit there, engaging in the considerations and writing of opinions for academical purposes. There is so much real practical need of every minute of the Court's time and every particle of the Court's energies. It is not only a useless waste, but a sinful waste, of the powers appointed by the law for the dispatch of public business. *I lay this matter upon the consciences and intelligence of the representatives of the Bar*

of Kentucky." (Proceedings of Kentucky State Bar Association, for the year 1904, p. 45. Our italics.)

Not only is the making of a new point on a petition for rehearing *permissible* in the Court of Appeals of Kentucky, but the bar has been urged to *confine their petitions to new points,* and not to insist upon re-arguing old ones.

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Attorneys for Plaintiff-in-Error.

December 6, 1919.

FILED
NOV 18 1919
JAMES D. MAHER,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1919. No. 108.

JETT BROS. DISTILLING COMPANY,
Plaintiff in Error,

versus

CITY OF CARROLLTON,
Defendant in Error.

In Error to the Court of Appeals of Kentucky.

Brief for Defendant in Error.

A. E. STRICKLETT,
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upreme Court of the United States

October Term, 1918. No. 108.

JETT BROS. DISTILLING COMPANY,
Plaintiff in Error,

vs.

CITY OF CARROLLTON,
Defendant in Error.

In Error to the Court of Appeals of Kentucky.

PART I.

Motion to Dismiss Writ of Error.

Now comes the City of Carrollton, the defendant in rror, and moves that the writ of error be dismissed on he following grounds:

First. No petition or application for a writ of error erein was filed by The Jett Bros. Distilling Company, the Court of Appeals of Kentucky, prior to or at the me the assignment of errors was filed, or at all.

Second. That at the time the writ of error was issued erein, to-wit, April 19, 1918, more than three months as elapsed after the entry of the judgment com-lained of.

ARGUMENT ON MOTION TO DISMISS.

The record in this case discloses that the writ of error was issued without a petition or application therefor having been made. The Act of September 6, 1916, Sec. 1228 of the Compiled Statutes of the United States, provides as follows:

> "No writ of error, appeal or writ of *certiorari*, intended to bring up any cause for review by the Supreme Court shall be allowed or entertained unless duly applied for within three months after entry of the judgment or decree complained of."

Rule 35 of this court provides:

> "Where an appeal or writ of error is taken from the district court direct to this court under Sec. 238 of an Act entitled 'An Act to codify, revise and amend the laws relating to the judiciary,' approved March 3, 1911, Chap. 231, the plaintiff in error or appellant shall file with the clerk of the court below with his petition for the writ of error or appeal, an assignment of errors. * * *."

Sec. 1662 of the Compiled Statutes (U. S., 1916) provides:

> "Writs of error from the Supreme Court to a state court in cases authorized by law shall be issued in the same manner and under the same regulations and shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of United States."

herefore, the same proceeding must be followed in aining a writ of error from the Supreme Court of the ted States to a state court, as is required in obtaining rit of error from the Supreme Court to the inferior rts of the United States. The statutes provide that writ of error shall be "duly applied for," and the les of this Court provide that the plaintiff in error * * shall file his petition accompanied with an assignnt of errors, with the clerk in the court below. hether the filing of a petition in the court below for writ of error is a condition precedent to removing a se from the State court to the Federal Supreme Court, a matter that addresses itself to this Court. Suffice to say, that the record in this case shows an absence of e petition or any formal application for the writ of ror.

2. At the time the writ of error was issued herein, writ, April 19, 1918, more than three months had elapsed ter the entry of the judgment complained of.

The record in this case shows that the judgment comained of was rendered on the 21st day of December, 17. Sec. 760 of the Code of Practice of the State of entucky provides:

> "The Court of Appeals may make rules for the convenient dispatch of business * * * and the manner and time of presenting * * * petitions for rehearing * * * provided,
>
> "That no mandate shall issue, nor decision become final, until after thirty days, excluding Sunday, from the day on which the decision is rendered, unless the court * * * otherwise directs."

Rule 13, Sub-Section 1 of the Court of Appeals of Kentucky, is as follows:

> "Petitions for Rehearing—When May be Filed in Clerk's Office. When time is extended to file a petition for rehearing, and the time expires during vacation, or where the court adjourns before the time for filing a petition for rehearing has expired, the filing of the petition with the clerk in the clerk's office within the time shall be held sufficient. The clerk, however, has no right to extend the time for filing, and this can only be done by an order from one of the judges."

Sub-Section 3 of Rule 13 of the Rules of the Court of Appeals of Kentucky, provides:

> "No extension of time for filing a petition for rehearing shall be granted except on the affidavit or statement of the attorney or client, stating sufficient cause therefor."

Excluding Sundays, from December 21, 1917, and excluding the day on which the judgment was rendered, the thirty days will have expired and the judgment of the Court of Appeals become final, on January 25, 1918. The record does not show that the time for filing the petition for rehearing was extended, which under the rules could be done only by order from one of the judges. The petition for rehearing in this case was filed on the 29th day of January, 1918. The writ of error bringing the case to this court was issued on the 19th day of April, 1918, more than three months after the judgment complained of had been rendered. Application for a writ of error to bring up any cause for review by the Supreme Court must be within three months after entry of the judg

t or decree complained of. (Act of Sept. 6, 1916, *ra.*)

Under the provisions of the Code of Practice of the ate of Kentucky, and the Rules of the Court of Ap-als, the judgment had become final when the petition r rehearing was filed, and although that court appar-tly considered the petition for rehearing, it did not ve the effect of suspending the judgment.

In the case of *Conboy* v. *First National Bank of Jersey ity*, 203 U. S., 141, 145, this court had under considera-on an appeal very similar to the one here presented. he court said:

> "No appeal lies from orders denying petitions for rehearing, which are addressed to the discretion of the court and designed to afford it an opportunity to correct its own errors. *Brockett* v. *Brockett*, 2 How., 238; *Wylie* v. *Coxe*, 14 How., 1. Appellant might have made his application for rehearing and had it determined within the thirty days, and still have had time to take his appeal. But he let the thirty days expire, as it did February 22, 1905. The right of appeal had then been lost and appellant could not reinvest himself with that right by filing a petition for rehearing.
>
> "The cases cited for appellant, in which it was held that an application for a rehearing, made before the time for appeal had expired, suspended the running of the period for taking an appeal, are not applicable when that period had already expired. 'When the time for taking an appeal has expired, it can not be arrested or called back by a simple order of court. If it could be, the law which limits the time within which an appeal can be taken would be a dead letter.' *Credit Company, Limited*, v. *Arkansas Central Railway Company*, 128 U. S., 258, 261."

It is apparent that the petition for rehearing filed by the plaintiff in error in this case, was not within the time provided by law, or the rules of the Court of Appeals. The writ of error was issued nearly four months after the judgment complained of was rendered. Therefore, for the reasons above assigned, the motion to dismiss the writ of error should be sustained.

PART II.

BRIEF FOR DEFENDANT IN ERROR.

Statement of the Case.

Jett Bros. Distilling Company is a corporation under the laws of the Commonwealth of Kentucky, and maintains in the City of Carrollton, Kentucky, a warehouse in which was kept in storage distilled spirits.

The defendant in error, the City of Carrollton, is a municipal corporation of the fourth class under the laws of the State of Kentucky. By this proceeding, the plaintiff in error seeks to have this court review a judgment of the Court of Appeals of Kentucky, holding it liable for the payment of taxes to the City of Carrollton on distilled spirits which were stored in its warehouse during the years from 1907 to 1916, both inclusive, and which were from time to time withdrawn from said warehouse between the first day of May, 1911, and the first day of January, 1917. (178 Ky., 561.)

All property located within the City of Carrollton was for the years in question, subject to municipal taxation, unless specifically exempt by the Constitution of Kentucky, and it was the duty of all persons holding or

ning property within said municipality, to list same r taxation and pay the taxes thereon. (Sections 170 d 174, Constitution of Kentucky.)

The General Council of the City of Carrollton for each ar mentioned, by ordinance levied a tax of seventy-five nts on each One Hundred Dollars of taxable property ithin its corporate limits. The ordinances levying a tax r each of the years in question were defective, and each rdinance was separately amended July 7, 1916. The istilled spirits stored in the plaintiff's warehouse were ssessed for taxation by the city authorities under Sec. 535 of the Kentucky Statutes, which was a part of the harter of cities of the fourth class, and which is as fol-ows:

> "Property valued as of the first of April. All property taxed according to value shall be valued as of the first day of April each year, and the person owning the same or holding the same in the right of another, on that day, shall list it with the assessor and remain bound for and pay the tax, notwithstanding he may have sold or parted with the property."

The assessment made by the city assessor how-ver, was void, as the city authorities had no power hatever to value or assess distilled spirits for the urpose of municipal taxation. The State Board f Valuation and Assessment under Section 4105 to 4114 of the Kentucky Statutes, was vested with au-hority to assess for purposes of taxation, distilled spir-ts stored in warehouses, from reports filed with the State uditor. The assessments thus made were certified by he Auditor to the County Clerk of Carroll County, who n turn certified the same to the Tax Collector of the City

of Carrollton, who proceeded to collect the taxes due on the assessments made for each of the years mentioned. Sections 4105 to 4114, are as follows:

"4105. (1) Owner of Warehouse to Report to Auditor. Every owner or proprietor of a distillery bonded warehouse in which distilled spirits are stored shall, between the first dayof September and the first day of October of each year, report to the auditor of public accounts, in writing, sworn to by the person making the report; or, if the owner or proprietor of such warehouse be a corporation, the report shall be made and sworn to by its principal officer or manager in charge. Such report shall show the quantity and kind of spirits in such warehouse on the first day of September in the year the statement is required to be made, the dates when made, the county, city, town or taxing district in which the warehouse is situated; whether or not the United States Government tax has been paid thereon, if not, the date of expiration of the bonded period; the fair cash value of the spirits estimated at the price it would bring at a fair voluntary sale, and such other facts pertaining to such spirits as the auditor may require.

"4106 (2) Reports—Auditor to Submit to Board of Valuation—Record to be Kept. That the said reports shall be, by the auditor of public accounts, submitted to a board of valuation and assessment composed of the auditor of public accounts, the treasurer of the State and the Secretary of State, who are hereby constituted such board, and said board shall fix the values for the purpose of taxation under this act, and assess the same accordingly, and shall keep a record of their valuations and assessments, in a book provided for that purpose, and said record shall be evidence in all courts of the proceedings of said board.

"4107 (3) Board to Assess—Notice to Owners—Hearing. The auditor of public accounts shall file such reports with the board, which shall assess the spirits for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale. The board shall at once notify the owner or proprietor of the warehouse of the amount so fixed; and such owner or proprietor shall have thirty days, after receiving the notice, to go before the board and ask a change of the valuation, and may introduce evidence; and the board may make such changes as it may deem proper. The action of the board shall be final.

"4108 (4) Values Certified to Auditor and Clerks. Immediately after finally fixing such values, the board shall certify to the auditor of public accounts the value of the spirits as assessed for State tax, and said officer shall certify to the said county clerk of the respective counties the amount liable for county, city, town or district taxation, and the date when the bonded period will expire on such spirits. The report shall be by the county clerk filed in his office, and by him certified to the proper collecting officer of the county, city, town or taxing district for collection.

"4109 (5) Custodian Liable for Tax. Any person or corporation having the custody of such spirits on the first day of September in the year the assessment is made shall be liable for all taxes due thereon, together with all interest and penalties which may accrue; and any warehouseman or custodian of such spirits, who shall pay the taxes, interest or penalties on such spirits, shall have a lien thereon for the amount so paid, with legal interest from day of payment.

"4110 (6) Taxes — When Due — Interest. Taxes on distilled spirits which may be assessed

while in a bonded warehouse, and on which the United States Government tax has not been paid, or will not become due before the first day of March after the assessment, shall be due on the second day of January, May and September next after the said Government tax become due or be paid or when the spirits are removed from the warehouse; and the taxes on each year's assessment shall bear legal interest until paid.

"4111 (7) Owner or Proprietor to Report and Pay Tax. Every owner or proprietor of a bonded warehouse in which distilled spirits may be stored, as contemplated in the preceding section, shall, on the first day of January, May and September next after said Government tax shall have been paid, become due, or be removed from the warehouse, make and transmit to the auditor of public accounts and the clerk of the county court in which the spirits may have been at the time of the assessment, a statement sworn to by the person whose duty it is to make the report, showing the quantity of spirits on which the Government tax has been paid or has become due, and what spirits have been removed from the warehouse during the preceeding four months, the years in which such spirits were assessed for taxation, and the county, city, town or taxing district in which the warehouse is situated in which the spirits were stored at the time of the assessment, and shall, at the same time, pay all taxes and interests on such spirits due the State, county, taxing district, city, or town to the officers entitled to receive the same. The report herein required shall be made by the owner or proprietor of such bonded warehouse whether any spirits are stored in such warehouse or not at the time the report is due.

"4112 (8) Penalty for Failure to Pay Tax. On the failure of any owner or proprietor of any

such warehouse to pay the taxes and interests within fifteen days after the same have become due, he shall be deemed delinquent, and a penalty of eight per cent. on each year's taxes due on the spirits shall attach, and the officer authorized to collect such taxes shall at once cause such proceeding to be instituted for the collection of such taxes, with such interest and penalties as may be provided by law for the collection of other delinquent taxes.

"4113 (9) Board May Assess if Report not Made. If any warehouseman or custodian of such spirits fail to make the report as required in section 1 of this article, the board shall ascertain the necessary facts therein required to be reported and for this purpose shall have access to the records of such warehouseman or custodian, and the same shall be assessed and taxes collected thereon, with interest and penalties, as though regularly reported.

"4114 (10) Penalty for Failure to Report —Making False One. Any person whose duty it is to make the reports as herein required, who shall fail to do so, shall be deemed guilty of a misdemeanor and, on conviction, be fined not less than one hundred nor more than five hundred dollars; and any such person who shall wilfully fail to make such report, with intent to evade payment of taxes, shall be guilty of a misdemeanor and, on conviction be fined not less than five hundred dollars nor more than one thousand dollars; and any person who shall make a false report, with intent to evade the payment of taxes, shall be deemed guilty of false swearing, and, on conviction, be punished as prescribed by law for such crimes."

Under the laws of Kentucky, taxes on whiskey in bonded warehouses, whether for State, County or munic-

ipal purposes, are payable when the Government tax is paid, or when the whiskey is withdrawn from the warehouse. The whiskey on which the taxes are due and involved in this case, was withdrawn from the warehouse of plaintiff in error, between May first, 1911, and January first, 1916, on which the municipal taxes at once became due and payable. The Jett Bros. Distilling Company declining to pay the taxes due on the valuation of distilled spirits, as fixed by the State Board of Valuation and Assessment, suit was instituted in the Carroll Circuit Court, which adjudged that the City of Carrollton was entitled to recover the taxes in question, subject to a credit of the taxes actually paid on the assessment as fixed by the City Assessor. From this judgment an appeal was prosecuted to the Court of Appeals, and that court affirmed the judgment of the lower court.

Argument.

I.

The Court of Appeals of Kentucky has frequently been called upon to construe the sections of the statutes, *supra*.

In the case of *Commonwealth of Kentucky* v. *The E. H. Taylor Co.*, 101 Ky., 325, the statutes were held to be constitutional. In the cases of *City of Louisville* v. *Louisville Public Warehouse Co.*, 107 Ky., 184, and *Krauer* v. *City of Henderson*, 155 Ky., 633, the Court of Appeals held that the assessment of distilled spirits should be made only by the State Board of Valuation and Assessment, and a public warehouse company is not liable to a municipality for taxes upon an assessment made by local taxing officers.

Whiskey in bond is not liable to any of the processes of the State courts, and there is no power to subject it to the demands of the state or any subdivision thereof for taxes until the Federal Government's lien for taxes has been fully discharged.

Plaintiff in error seems to be imbued with the idea that its obligation to the City of Carrollton had been fully discharged when it paid taxes on the valuation of the whiskey, as fixed by the city authorities. That assessment was absolutely void. But the tax paid by plaintiff in error was credited on the taxes which became due under the legal assessment, and therefore plaintiff is not prejudiced by reason of payment thus made.

The fact that the ordinance levying the tax for the several years, was amended so as to include all species of property on which the municipality was entitled to collect taxes, for its governmental purposes, does not present a Federal question.

All property within the municipality is subject to taxation for municipal purposes. If, for instance, the property on which the tax is sought to be collected, was stock or bonds, and had, prior to the institution of the suit, been sold and transferred by the owner or holder, he nevertheless would be liable to the payment of the tax for the period during which he was the holder or owner, notwithstanding the fact that he had disposed of it before the institution of the action to enforce the collection of the tax due.

In the instant case, the plaintiff in error contends that it is not liable for the taxes due on the distilled spirits removed from its warehouse between the first day of May, 1911, and the first day of January, 1916, because the whiskey at the time had been removed from the ware-

house and was no longer its property or in its possession or under its control, and that if plaintiff in error was required to pay taxes on this whiskey at the time, it would have no possible means of protecting itself. It is nevertheless liable for the taxes due on the whiskey, as it was its duty under the law to pay the municipal taxes thereon. But this question is not one for this Court, as it does not present a Federal question.

A very similar contention was made in the case of *Thompson* v. *Kentucky*, 209 U. S., 340. In that case the contention was made that Thompson paid the taxes demanded of him under a different construction of the statute, receiving a receipt from the State, and that it was estopped to make further demands. He contended that he had made the report required by law and paid all taxes demanded of him, and having discharged his legal obligation as he supposed, he delivered the property to its owner, and lost the lien which the statute gives him, which constituted the legal justification as he contended of the charge upon him, and he is now subjected to liability for interest and penalties for which he has no security or power to enforce reimbursement.

This Court said:

> "To the contention that the warehouseman has lost his lien through the construction put upon the act by the State's fiscal officers, and that the State was therefore estopped from collecting the interest, the court replied: 'It may be true that this will work a hardship upon the distiller, but it was his duty, under the law, to pay the taxes and the accrued interest, and we can not, in his behalf, waive the time-honored and conclusive presumption that he knew the law; and especially is this true since 1897, when the case of *Commonwealth* v. *Taylor* was de-

cided, thus establishing beyond all question that taxes on whiskey in bond bore interest on the assessments made during the bonded period. Saying this, however, it is elementary that the State is not estopped by the laches of its officers.'

"But from this situation this court can not give relief. Due process of law does not assure to a taxpayer the interpretation of laws by the executive officers of a State as against their interpretation by the courts of the State or relief from the consequences of a misinterpretation by either."

It will be observed that the plaintiff in error in this case did not even plead that the payment of taxes to the City of Carrollton under the levies at issue, deprived it of its property without due process of law, in violation of the Constitution of Kentucky, or of the Fourteenth Amendment to the Constitution of the United States, but this question was raised for the first time in its petition for rehearing in the Court of Appeals.

II.

Plaintiff in error contends that property in the City of Carrollton was assessed for the years in question for purposes of taxation for municipal purposes, by the City's constituted authorities, at not over thirty per cent. of the fair cash value; and that the distilled spirits on which the city is seeking to collect the taxes involved in this case, were assessed at one hundred per cent. of their cash value; and that this assessment was "unjust, unequitable, and in violation of the rights vested in this defendant by the Constitution of the State of Kentucky," and "in violation of the Fourteenth Amendment

of the Constitution of the United States." (Page 71 of Record.) The property within the City of Carrollton other than distilled spirits is assessed by its officials authorized by the charter of cities of its class in the State of Kentucky. The Board of Valuation and Assessment is composed of state officials. The assessments on the whiskey on which the City of Carrollton is seeking to recover taxes in this proceeding, were made from year to year by the State Board of Valuation and Assessment, and on which the plaintiff in error paid the State and County taxes as the same became due and payable under the laws of the Commonwealth of Kentucky. No complaint was made by plaintiff of the alleged discriminatory valuation of its property, although it received notice from the State Board of Valuation and Assessment from time to time, as the assessments were made. Plaintiff acquiesced in the assessment and paid the taxes to the State and to the County thereon for the various years in question. The law under which these assessments were made by the State Board of Valuation and Assessment, provides a complete remedy to the tax payer where unfair valuation is made, or where valuation or assessment made by the Board works discrimination.

The case of *Greene* v. *Louisville & Interurban Railroad Co.*, 244 U. S., 499, decided by this court and cited by counsel, is not in point. In that case, the State Board of Valuation and Assessment fixed the value, and the taxpayer appeared and protested against the assessment as being excessive as compared with valuation of other property in the state for purposes of taxation; the Board refusing to change the assessment, thereupon, the taxpayer instituted a proceeding in equity in the United

...ted District Court for the Eastern District of Kentucky, to enjoin the collection of taxes by reason of the unfair and discriminatory valuation fixed by the Board. In that case, the taxpayer attacked the action of the Board in a direct proceeding.

In this case, no complaint was made to the Board of Valuation and Assessment, of the assessment by it made, and the plaintiff in error is collaterally attacking the action of the State Board, whose findings are *quasi*-judicial.

In a companion case of the Louisville & Interurban case just referred to, to-wit, *Louisville & Nashville Railroad Company* v. *Greene*, 244 U. S., 522, 536, this court said:

> "The finding of an official body such as the Boad of Valuation and Assessment, made—as was the case here—after a hearing and upon notice to the taxpayer, are *quasi*-judicial in their character, and are not to be set aside or disregarded by the courts unless it is made to appear that the body proceeded upon an erroneous principle or adopted an improper mode of estimating the value of the franchise, or unless fraud appears. *Pittsburgh, etc., Railway Co.* v. *Backus*, 154 U. S., 421, 435, 436; *Chicago, Burlington & Quincy Ry. Co.* v. *Babcock*, 204 U. S., 585, 596. In this case there is no showing of fraud, the contention being that the Board departed from the mode prescribed by the statute. If they did this, or if they proceeded in disregard of rights secured to the taxpayer by the state or federal constitution, of course they proceeded upon an erroneous principle. *Henderson Bridge Co.* v. *Commonwealth*, 99 Kentucky, 623, 645; *Hager* v. *American Surety Co.*, 121 Kentucky, 791, 800."

There is no showing in this record that the plaintiff in error has been deprived of any right. The State Board of Valuation and Assessment was open to them to make any complaint against the assessment in question. The assessments were made from reports made to the Auditor by the plaintiff in error. It accepted the valuation of the property as made by the Board, and paid the State and County taxes thereon.

The Court of Appeals in considering this case, 178 Ky. 561, 566, said:

> "It is further asserted that the recent cases of *Green* v. *Louisville & Interurban Railway Co.*, and *Green* v. *Louisville Railway Co.*, decided by the Supreme Court of the United States and reported by 37 Supreme Court Reports, 673, uproot the contention that the act is constitutional, and hold that the State Board of Valuation, and the city assessor and Board of Supervisors, acting independently of each other, and fixing different valuations of the same property, work a discrimination, inimical both to the federal and state constitution. In this, however, appellant is in error. It must be borne in mind that complaint is only made of the assessment. The warehouseman had his remedy, in case of an excessive or unfair valuation, by appearing before the Board of Valuation and Assessment at the time he received notice of the valuation fixed, and there make complaint as provided in Section 4107, Kentucky Statutes. This appellant failed to do but acquiesced in the assessment by paying taxes both to the county and state on the valuation fixed by the State Board. This being true, it can not be heard to complain now."

The contention of the plaintiff in error is answered by the case of *Western Union Telegraph Co.* v. *Missouri*, 190 U. S., 412. In that case the Western Union Telegraph Co., in a proceeding attacking an assessment of its property for purposes of taxation, alleged that the Board of Equalization had practiced discrimination against it by assessing at a value disproportionate to the value assessed on real and personal property by local assessing officers. This court on page 426, quoted from the Supreme Court of Missouri, the following:

> "The defendant can not avail itself of these cases, for the reasons, first, that it seems to raise the question of discrimination by a defense to an action at law to collect the taxes, and thereby collaterally attacks the judgment of the board of equalization; second, that such questions can only be raised by a direct attack, in equity, and then only upon the condition precedent that it pays or tenders the amount justly due and only asks to have the collection of the excess restrained. This the defendant has not done in this case. It simply alleges a discrimination or excessive tax, and then seeks to defeat the whole assessment without paying or tendering anything, notwithstanding it admits by its answer and its proofs that it has property in this State subject to taxation of the value of $541,472.40. Upon the authority of the cases relied on by it, this can not be done."

This court then said:

> "We concur in this view. The proceedings before the board were *quasi* judicial and the order made by it was within its jurisdiction. It was not void on its face, and can not be resisted in an action at law. This is the principle announced in the case referred to. In *Stanley*

v. *Supervisors of Albany*, 121 U. S., 535, is cited, among other cases, *Balfour* v. *City of Portland*, 28 Fed. Rep., 738. The case is especially pertinent. The action was at law for the recovery of taxes paid under protest which had been levied upon property which, it was charged, had been deliberately overvalued. Recovery was denied. The Circuit Court said:

"'The property was subject to taxation by the authority and for the purpose alleged. True, the result reached was erroneous, because of the willful disregard in the proceeding of the law requiring uniformity in the valuation of property for taxation within the jurisdiction of the defendant. Still, the proceeding being *quasi* judicial, and the subject matter within the jurisdiction of the officers who conducted it, the result reached is so far conclusive that the legality of it can not be questioned in an action at law to recover back the one half of the tax as illegal.'

"So this court said in *Stanley* v. *Supervisors*, *supra*:

"'It is only where the assessment is wholly void, or void with respect to separate portions of the property, the amount collected on which is ascertainable, or where the assessment has been set aside as invalid, that an action at law will lie for the taxes paid, or for a portion thereof. Overvaluation of property is not a ground of action at law for the excess of taxes paid beyond what should have been levied upon a just valuation. The courts can not, in such cases, take upon themselves the functions of a revising or equalizing board. *Newman* v. *Supervisors*, 45 N. Y., 676, 687; *National Bank of Chemung* v. *Elmira*, 53 N. Y., 49, 52; *Bruecher* v. *The Village of Portchester*, 101 N. Y., 240, 244; *Lincoln* v. *Worcester*, 8 Cush., 55, 63; *Hicks* v. *Westport*,

130 Massachusetts, 478; *Balfour v. City of Portland*, 28 Fed. Rep., 738.'

"And we think overvaluation of property can not be a ground of defense at law. In other words, the action of the tax officers, being in the nature of a judgment, must be yielded to until set aside. This can only be done in a direct proceeding."

This case seems to answer conclusively all the contentions made or offered by plaintiff in error in this case, since complaint was made only of the assessment in the Court of Appeals.

Other questions were raised and urged for the first time in a petition for rehearing, but it is well settled by the decisions of this Court, that the attempt to raise for the first time a Federal question, in a petition for rehearing after judgment comes too late. *Loeber* v. *Schroeder*, 149 U. S., 580, 585.

Therefore the decision of the Court of Appeals of Kentucky should be affirmed, or the writ of error dismissed.

Respectfully submitted,

A. E. Stricklett,

Attorney for Defendant in Error.

J. A. Donaldson,

G. A. Donaldson,

J. L. Donaldson,

Of Counsel.

NOTICE.

JETT BROS. DISTILLING CO.,
Plaintiff in Error,

vs.

CITY OF CARROLLTON,
Defendant in Error.

The plaintiff in error and its attorneys, Mr. Helm Bruce and Mr. George B. Winslow, will take notice that the foregoing motion to dismiss the writ of error in the above entitled cause will be submitted to the Supreme Court of the United States for a decision of the Court thereon at the October, 1919, term, to be held in the Capitol in the City of Washington, District of Columbia, when the writ of error is called in said case, for argument by that Court.

J. A. Donaldson & Sons,
By A. E. Stricklet,
Attorneys for Defendant in Error.

Carrollton, Kentucky,
November 10, 1919.

To Mr. Helm Bruce, and
Mr. George B. Winslow,
Counsel for Plaintiff in Error.

The above notice accepted, this 12th day of November, 1919.

Helm Bruce,
George B. Winslow,
Attorneys for Plaintiff in Error.

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Supreme Court of the United States

October Term, 1919. No. 108.

JETT BROS. DISTILLING COMPANY,
Plaintiff in Error,

No. 108. *vs.*

CITY OF CARROLLTON,
Defendant in Error.

Supplemental Brief for Defendant in Error.

MOTION TO DISMISS.

Counsel for plaintiff in error has suggested some propositions in his reply brief, which we desire to answer.

The law was enacted and the rules of this court promulgated relative to the manner in which writs of error may be issued, to establish orderly procedure. The proper allowance and issuing of the writ of error is the foundation of the jurisdiction of the Federal Supreme Court over judgments of the State courts. Therefore, in order that the jurisdiction might obtain, it would seem that a petition and formal order allowing the writ of error, are steps necessary to remove the case from the State court to the Federal Supreme Court.

This Court in the case of *Gleason* v. *Florida*, 9 Wall.,

779, 783, had under consideration a motion to dismiss the writ of error, on the ground that it had not been properly allowed. The Court said:

> "But on looking into the record, we find no allowance of the writ. And this has been repeatedly held to be essential to the exercise by this court of revisory jurisdiction over final judgments or decrees by the courts of the States. In the case of *Twitchell* v. *The Commonwealth*, the rule which governs the allowance, by National courts and judges, of writs of error to State courts, was thus stated: 'Writs of error to State courts have never been allowed as of right. It has always been the practice to submit the record of the State court to a judge of this court, whose duty has been to ascertain whether any question cognizable here on appeal was made and decided in the proper court of the State, and whether the case, upon the face of the record, will justify the allowance of the writ.' And this may now be considered as the settled construction of the Judiciary Act on this subject. The foundation of the jurisdiction of this court over the judgments of State courts is the writ of error; and no writ of error to a State court can issue without allowance, either by the proper judge of the State court or by a judge of this court, after examination as just stated."

If, therefore, allowance of the writ of error is essential to the jurisdiction of the Federal Supreme Court over the judgments of the State courts, the question is suggested then, how is the writ of error allowed? In the instant case, the Chief Justice of the Court of Appeals of Kentucky, allowed the writ of error by endorsing thereon the following: "Allowed by W. E. Settle,

Chief Justice Kentucky Court of Appeals." No formal order of the Chief Justice of the Court of Appeals of Kentucky allowing the writ of error seems to have been entered in this case, or at least, none appears in the printed record.

We would not be understood as being ultra-technical in urging the dismissal of the writ of error in this case. The absence of the petition for a writ of error and formal order allowing the same, seems to me to be of sufficient importance to direct the attention of the Court thereto, in order that we might have an expression from the Court upon the question of procedure in this respect. If either the failure to file a petition for writ of error, or the absence of an order formally allowing the writ of error, is fatal to this Court taking jurisdiction of the case, we submit that the writ of error in this case should then be dismissed.

2. It having developed that an agreement had been entered into by counsel who represented the parties to this litigation in the Court of Appeals of Kentucky, by which plaintiff in error was given additional time in which to file petition for rehearing, the writ of error was issued within the time provided by law, and the second ground set forth in the motion to dismiss is now withdrawn.

MERITS.

I.

Counsel for plaintiff in error contends that an assessment for purposes of taxation may be attacked at any time collaterally, or the correctness of the assessment

may be attacked, in a suit for the collection of taxes. This may be done only where the assessment was made by a person unauthorized to make it, or where in the making of the assessment, the provisions of the statute have not been followed; but, where an assessment is made by the proper officers and the provisions of the statutes in reference thereto substantially followed, or the assessment approved in manner provided by law, and no relief obtained within the time provided by statute for correcting it, if erroneous, the assessment becomes final and conclusive, both upon the tax payer and upon the taxing authorities. It is certainly not contemplated, nor is it the law, that a tax payer by merely denying the correctness of the assessment made by the proper officer, could have his assessment reviewed by the courts in a collateral proceeding. If such was the case, the State, the county and the various municipalities, would be seriously handicapped for want of sufficient revenue in the performance of their respective governmental functions. In a case cited by counsel *Henderson Bridge Co.* v. *Comth,* 99 Ky., 623, 645, the Court of Appeals said:

> *"It is not contemplated by the law that every corporation, company or association operating under and enjoying a franchise from the State, should simply by denying the correctness of the valuation placed on its franchise by this board put again the whole thing in issue and have same reheard and readjudicated by the courts. It would be an insufficient system of revenue for the State if the just taxes against every such corporation, company or association could only be collected at the end of a separate law suit against each."* [Emphasis ours.]

So to avoid the ill consequence that would result

from leaving open the correctness of an assessment to collateral attack, the court has held that an assessment made by the proper officers, and substantially in the manner provided by law, and no relief obtained within the time provided by law for correcting their action, if erroneous, becomes final and conclusive. Such in effect were the conclusions of the Court of Appeals in the instant case.

But counsel for plaintiff in error says the reasoning of the Court of Appeals in its opinion in this case "seems * * * very peculiar." The Court in part said:

> "It must be borne in mind that complaint is only made of the assessment. The warehouseman has his remedy in case of an excessive or unfair valuation, by appearing before the Board of Valuation and Assessment at the time he received notice of the valuation fixed and there make complaint as provided in Section 4107 of the Statutes. This appellant failed to do." (178 Ky., 566.)

Having failed to avail itself of the remedy provided by the statute, plaintiff in error can not be heard to complain now. The principle announced in this case has long been the law in the State of Kentucky in reference to assessments made by proper assessing officers.

In the case of *Coulter* v. *Louisville Bridge Co.*, 114 Ky., 42, the facts were substantially as follows: The Louisville Bridge Company filed with the Auditor of Public Accounts the report required by law, upon which the State Board of Valuation and Assessment assessed its franchise for taxation purposes for 1898. This report was submitted to the Board which fixed the valuation of its franchise and notified the Bridge Company as

provided by law. Within thirty days the Bridge Company appeared before the board and protested, and upon a reconsideration, there was entered on the records "No franchise," thereby meaning to find that the valuation placed upon the franchise for the purpose of taxation under the statute was nil. Thereafter the State Board of Valuation and Assessment took up the valuation of the franchise of the Bridge Company and reconsidered the action of the former board, and reassessed the Bridge Company's franchise for the year 1898, notifying the Bridge Company, who instituted an action in equity to enjoin the collection of the tax. The Court of Appeals on page 46 said:

> "The question resolves itself into this: Is there a time where the action of the assessing officer becomes final both to the citizen and the taxing power?"

And answering that question on page 47, the Court said:

> "We are of opinion and hold that when the proper assessing officers, within the time and substantially in the manner prescribed by statute, have acted in considering and fixing the valuation upon property liable to assessment for taxation, and no relief has been obtained within the time allowed by statute for correcting their action, if erroneous, that action is final. The judgment and action of the assessor based upon the legal evidence then obtainable and at hand, and as fixed by statute, when recorded in the proper tax lists, in the very nature of things, should be conclusive upon the State, as well as against the taxpayer."

And again the Court of Appeals of Kentucky in the case of *First National Bank* v. *Hopkinsville,* 128 Ky., 383, reaffirmed the rule announced in the Coulter case cited above. In this case the First National Bank of Hopkinsville instituted an action against the City of Hopkinsville to recover taxes alleged to have been illegally collected by the City of Hopkinsville. The bank claimed that its shares of stock were assessed at $60,087 on which it paid taxes to the city, and at the time the assessment was made it was the owner of $50,000 worth of government bonds in which its capital and surplus was invested, and that state banks were entitled to deduct from the aggregate value of their assets non-taxable securities, it was entitled to the same right. The Court of Appeals, pages 386 and 387, said:

> "This is not a case where the assessment is void. Nor is it a case where a party is assessed upon property he does not own. It is simply a case where the claim is made that the assessment is too high because appellant was not given credit in the assessment fixed for the amount of its government bonds. In order to hold that appellant is entitled to recover we would have to say that the assessment was too high. This we have no power to do after the assessing officers have passed upon the question, and no complaint has been made to them within the time prescribed by law."

The Court then cited and approved the rule in the Coulter case and on page 388, further said:

> "Appellant's property was assessed by the proper officers. The assessment was examined and approved by the boards provided by law. Their action, therefore, is final and conclusive, both upon appellant and appellee. That being

> the case the courts have no jurisdiction to supervise and correct the assessment."

Substantially the same question was before this Court in the case of *Stanley* v. *Supervisors of Albany*, 121 U. S., 535, 549, 550. It was contended that the assessment of shares of stock in a national bank, at a greater rate than was assessed on share of stock in banks organized under the laws of New York and located in the same city, and at a greater rate than was assessed on other money and capital in the hands of individual citizens of the State, was illegal and void, and the money received therefor was wrongfully collected and paid into the county treasury, and it belonged of right to the shareholders. The Court said:

> "Overvaluation of property is not a ground of action at law for the excess of taxes paid beyond what should have been levied upon a just valuation. The courts can not in such cases take upon themselves the function of a revising or equalizing board. (Citing cases) * * *
>
> "When the overvaluation of property has arisen from the adoption of a rule of appraisement which conflicts with a constitutional or statutory direction, and operates unequally not merely on a single individual but on a large class of individuals or corporations, a party aggrieved may resort to a court of equity to restrain the exaction of the excess, upon payment or tender of what is admitted to be due. This was the course pursued and approved in *Cummings* v. *National Bank*, 101 U. S., 153."

The question of the finality of an assessment was again before the Court of Appeals in the case of *Comth.* v. *Southern Pacific Company*, 150 Ky., 97, 108. The Court

again quoting and reaffirming the Coulter case, *supra*, said:

> "When the proper assessing officers, within the time and substantially in the manner prescribed by statute, have acted in considering and fixing the valuation upon property liable to assessment for taxation, and no relief has been obtained within the time allowed by statute for correcting their action, if erroneous, that action is final."

The case of *Illinois Central Ry. Co.* v. *Comth*, 218 U. S., 551, decided by the Court of Appeals of Kentucky (128 Ky., 268), and brought to this court for review on writ of error, involved the right of a taxpayer to have reviewed by the courts an assessment which was made by the State Board of Valuation and Assessment, and which had become final by failure of the taxpayer to appear before the board and seek a reduction of the assessment within the time provided by law. This Court on page 561 quoted from the opinion of the Court of Appeals, the following:

> " '*The Board made the assessment in the way that all other assessments were made. It gave notice of the assessment to the railroad company as required by statute and at the end of thirty days it gave notice, as provided by the statute, that the assessment had become final. When this had been done, the matter passed beyond the control of the board. A final assessment had been had as provided by law, and if any injustice was done the taxpayer, it was due entirely to his failure to appear before the board and ask a reduction of the assessment.* No reliance could be placed in such proceedings if the vadidity of the record was made to depend upon the secret intentions of the assessing officer. The

validity of their actions depends upon what they do and not upon their undisclosed purposes. When the assessment had become final and the Railroad Company owed the State the amount of taxes thus fixed, the assessing officers were without authority afterward to make any agreement with the railroad to the effect that if the railroad would pay the taxes for 1899, they would forego collecting the taxes for the previous years.' [Emphasis ours.]

"And on the petition for rehearing the court added this statement:

"'When the board made an assessment and sent out the preliminary and the final notices as provided by statute that the assessment had been made its action was final and the legal effect of its action must depend on what they did and not on the secret intentions of the Auditor.'"

This Court on page 562, then said:

"This construction of the powers of the state officers under the statutes of the State relating to franchise assessments—this determination with regard to the finality of the assessment in question—does not violate any constitutional right of the plaintiff in error. The assessment was made in accordance with the law of the State; it was, under that law, a final assessment and no ground is shown here for impugning it."

We therefore contend that the assessments of the distilled spirits for the various years in question having been made by the proper assessing Board within the time and substantially in the manner provided by law, are final. Paraphrasing the language of the Court of Appeals of Kentucky approved by this Court in the Illinois Central Railroad Case, *supra*, "if any injustice was done

the plaintiff in error, it was due entirely to its failure to appear before the board and ask a reduction of the assessment. Not only did plaintiff in error fail to appear before the Board and ask for a reduction, but it condoned the action of the Board by paying the State and County taxes due on an assessment that it is now asking this Court to declare illegal and void.

Counsel for plaintiff in error on page 11 of his reply brief, contends that "the Court of Appeals of Kentucky has held in this line of cases that it is necessary for the plaintiff to allege the taking of every step necessary to show that the tax sought to be collected is a valid tax." That at one time was the law, but it is not the law at this time, nor was it the law during any of the years involved in this case. In the case of *Board of Councilmen of City of Frankfort* v. *Morgan,* 110 S. W., 286, 288, the Court of Appeals of Kentucky said:

> "It was formerly the rule in this state that, in actions to recover taxes, the petition must affirmatively set up the existence of every fact necessary to show that all the provisions of the statute authorizing the imposition of the tax were complied with by the assessing officers; but this rule has been changed by the statute, *supra,* as well as by the later decisions of this court (*Alexander* v. *Aud,* 88 S. W., 1103, 28 Ky. Law Rep., 69), the purpose of the statute and decisions being to put upon the taxpayer, when sued to recover taxes, the burden of pointing out the particular defects in the creation, levy, or assessment of the tax that he relies on to defeat its collection."

In the case of *Asher* v. *City of Pineville,* 140 Ky., 670, the Court again had under consideration the sufficiency

of the allegations of a petition wherein a taxpayer was seeking to enjoin the City of Pineville from selling property levied upon by it to pay taxes due said City. On page 673 quoting from the Frankfort case, *supra*, the Court said:

> " 'If a taxpayer desires to resist the collection of the taxes, he must not only point out in his pleading the particular grounds relied on, but he must establish their existence by proof. The city is not required to introduce any evidence until the taxpayer has made out a case that will overcome the legal presumption that the proceedings by the city and the taxing officers are regular * * *. If he fails in this, the city in attempting to enforce the collection of taxes will not be put to the necessity of showing affirmatively that the law was complied with in the levy.'
>
> "After saying that the limitations upon the tax rate contained in the Constitution were mandatory, and could not be exceeded or evaded by the council or other taxing authority, we further said:
>
> " 'But here, again, the taxpayer, who is assailing the tax, must prove the averments of his pleading. The presumption is that the council or authority levying the tax has not exceeded its power; and the taxpayer attacking the validty of the tax upon the ground that it exceeded the constitutional limitation, must point out in his pleading the grounds he relies upon, and sustain his contention by evidence.' "

From the authorities above cited, it will be seen that the rule of pleading is changed, so that instead of the burden being on the taxing power to allege and prove the taking of every necessary step to show the tax sought to be collected is legal, the burden is on the taxpayer re-

sisting the payment of the taxes to allege and prove wherein the right to collect the tax is illegal or void.

II.

Counsel in his original and reply briefs in this case insists that the City of Carrollton levied the tax on which this suit was brought on the 7th and 13th days of July, 1916. The petition in its several paragraphs shows that the city council of the City of Carrollton levied a tax of seventy-five cents on each one hundred dollars of taxable property in the City of Carrollton at the proper time and for each of the years in question. These levies were made each year at the time provided by law, by resolution of the City Council, but the charter provides that the levy of the annual *ad valorem* tax shall be by ordinance. Thus perceiving the error in the proceedings, the city council on July 7th and 13th, 1916, proceeded to correct the irregularities so as to conform to the charter provisions. Therefore, the proceedings of the council on the 7th and 13th days of July, 1916, were for the purpose of amending and correcting what the city council had attempted to do in each of the preceding years from 1907 to 1915, inclusive. This council had the right to do. In the case of *Commonwealth* v. *C. & O. S. W. Ry. Co.*, 141 Ky., 633, the Court of Appeals of Kentucky held that a fiscal court of a county could amend the ordinance levying a tax eleven years after it attempted originally to levy a tax so as to conform to the law.

In that case on pages 637 and 638, the Court of Appeals said:

> "If the fiscal court had failed altogether—had not attempted, let us say—to levy a tax for

1896, it was nevertheless competent for it to levy it subsequently, for until its power was exhausted it might be exercised. The rights of the parties would however be fixed as of the date of the levy, not as of the time when it might have been first levied. *But where the attempt had been made to levy the tax, the ordinance fixing the amount duly passed, and the assessment of all property liable to the tax had been regularly made, it was competent for the fiscal court to cure a defect in its proceedings so as to make them conform to law, as it would have been to correct any other mistake in any other point of the assessment proceedings so as to make valid that which had been lawfully attempted.* * * * A tax would be void only when there is lack of power to levy it. In every other particular the proceedings, however informal, may be cured and perfected so as to comply with the law. It would be a strange, as well as destructive rule of law, that would make it impossible to cure errors in procedure of form in taxing matters, making it thereby possible for ignorant or designing officials to stop the government by failing to strictly follow in correct time and manner the prescribed procedure in assessments." [Emphasis ours.]

The levy of the tax as amended by the Council of the City of Carrollton is not before this Court for consideration. The plaintiff in error for the first time, attempted in its petition for rehearing, to raise a federal question in connection with the application of the statutes of limitation of Kentucky (Record, page 135).

The only Federal question distinctly raised in the court of original jurisdiction by plaintiff in error was the alleged discrimination of the valuation of its property for purposes of taxation. And this was the only question of

a Federal character passed upon or decided by the Court of Appeals. This Court will consider only the Federal questions properly raised in the trial court and decided by the Court of Appeals. This seems to be the established rule.

The rule contended for here was stated by this Court in *Chappell* v. *Bradshaw,* 128 U. S., 132, 133, where the Court said:

> "To give this court jurisdiction to review the judgment of a state court under Sec. 709 of the Revised Statutes, because of the denial by a state court of any title, right, privilege, or immunity claimed under the Constitution of any treaty or statute of the United States, it must appear on the record that such title, right, privilege, or immunity was 'specially set up or claimed' at the proper time in the proper way. 'To be reviewable here,' says Waite, C. J., in *Spies* v. *Illinois,* 123 U. S., 131, 181, 'the decision must be against the right so set up or claimed. As the Supreme Court of the State was reviewing the decision of the trial court, it must appear that the claim was made in that court, because the Supreme Court was only authorized to review the judgment for errors committed there, and we can do no more.' Tested by this well settled rule it is apparent that this writ of error can not be maintained, as it is conceded that the plaintiff in error did not set up or claim in the trial court the limitation, the benefit of which he now insists should have been accorded him."

We may add that the jurisdiction of the Court of Appeals in a case of this kind is to review only the judgment of the court of original jurisdiction. This Court also in the case of *Loeber* v. *Schroeder,* cited in our original brief, 149 U. S., 574, 585, said:

"It is also well settled by the decisions of this court that the attempt to raise for the first time a Federal question, in a petition for rehearing, after judgment, comes too late. *Texas and Pacific Railway Co.* v. *Southern Pacific Railroad Co.*, 137 U. S., 48, 54; *Butler* v. *Gage*, 138 U. S., 52; *Winona & St. Peter Railroad* v. *Plainview*, 143 U. S., 371; *Leeper* v. *Texas*, 134 U. S., 462; and *Bushnell et al* v. *Crooke Mining and Smelting Co.*, 148 U. S., 682."

We therefore submit that under the decisions of this Court there is but one question of a Federal character properly before it, namely, the alleged discrimination in respect to the assessment of the distilled spirits on which the tax is sought to be collected in this proceeding. But under the assessment statutes as construed by the Court of Appeals of Kentucky, which this Court recognizes and accepts as "the authoratative declaration of what the law is," *Burgess* v. *Seligman*, 107 U. S., 20, 33, the assessment in question was final and the court has no jurisdiction to supervise or correct it. (*First National Bank* v. *Hopkinsville, supra.*)

We therefore submit that the decision of the Court of Appeals of Kentucky should be affirmed or the writ of error dismissed, all of which is

Respectfully submitted,

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1919.

JETT BROS. DISTILLING COMPANY *v.* CITY OF CARROLLTON.

ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

No. 108. Argued December 19, 1919.—Decided March 1, 1920.

An objection that a tax is void under the Fourteenth Amendment because of systematic discrimination by officials in making assessments, but which does not draw in question before the state court the validity of the statute or authority under which they acted, will not support a writ of error from this court under Jud. Code, § 237, as amended. P. 5.

A petition for rehearing, merely overruled by the state court without opinion, is not a basis for a writ of error. P. 6.

Writ of error to review 178 Kentucky, 561, dismissed.

THE case is stated in the opinion.

Mr. Helm Bruce, with whom *Mr. Geo. B. Winslow* was on the briefs, for plaintiff in error, argued, *inter alia*, that the point that the tax was void and without authority because assessed in violation of due process of law after

the whiskey had ceased to be the property of the Distilling Company, was sufficiently raised and was necessarily decided by the state court, because, while on this point the Constitution was not invoked *eo nomine* in the complaint, the facts from which the deduction of unconstitutionality must follow were specifically set forth and the constitutional claim was specifically made in a petition for rehearing.

The reason for holding that a federal question made for the first time in a petition for a rehearing is not generally sufficient, is that, as a general rule, new grounds for decisions will not be allowed to be presented in a petition for a rehearing; and therefore if the state court in overruling such a petition is silent on the subject of a federal question, it will not be presumed that it passed on the federal question. *Texas & Pacific Ry. Co.* v. *Southern Pacific Co.*, 137 U. S. 48, 53. In view, however, of the practice of the Kentucky court, which allows new grounds of decision to be presented by petition for a rehearing, the basis being in the record, *Elsey* v. *People's Bank of Bardwell*, 168 Kentucky, 701, the denial of the petition here necessarily imports an adverse decision of the constitutional claim.

It has often been held that where a federal question is distinctly made in the court of original jurisdiction, and where the court of last resort in the State must necessarily have decided the question in order to make the decision it did make, this is sufficient to give this court jurisdiction, even though the state court was silent on the subject. *Steines* v. *Franklin County*, 14 Wall. 15, 21. In like manner, where it is evident from the record and the practice of a state court, that a federal question made in a petition for a rehearing must have been decided in passing upon the petition, that should be sufficient to give this court jurisdiction.

1. Opinion of the Court.

Mr. A. E. Stricklett, with whom *Mr. J. A. Donaldson*, *Mr. G. A. Donaldson* and *Mr. J. L. Donaldson* were on the briefs, for defendant in error.

MR. JUSTICE DAY delivered the opinion of the court.

The City of Carrollton brought suit against Jett Bros. Distilling Company to recover balances alleged to be due as taxes upon distilled spirits belonging to the company held in a bonded warehouse in that city. The taxes sued for were those for the years 1907 to 1916, inclusive. It appears that during those years the City Assessor undertook to assess for taxation the distilled spirits in the bonded warehouse and the city taxes were paid as thus assessed. This suit was brought to recover taxes for the above mentioned years upon the theory that during that period the spirits should have been valued by the State Board of Valuation and Assessment as provided by the statutes of Kentucky. (Kentucky Stats., §§ 4105, 4114.) It was alleged that the valuation by the City Assessor was without authority of law, by mistake and for a much less sum than that fixed for each of said years by the State Board. It was also alleged that the company had notice of the valuation fixed by the State Board; that the City Assessor was without authority to assess spirits in bonded warehouses; that the value fixed by him was an inconsiderable sum and much less than that fixed by the State Board in accordance with the Kentucky statutes. The Distilling Company took issue upon the petition. It pleaded the original levies for the years in question and the payment of the taxes for each and all of the said years. It pleaded that the whiskey which it was sought to tax under the new levy of 1915–1916 had been removed from the bonded warehouse of the company, and was no longer its property, and that it could no longer protect itself as it could have done had the tax been levied while the spirits were in its possession.

In the nineteenth paragraph of the answer a defense was set up upon a ground of federal right under the Constitution. It was averred that during all the years covered by the amended petition it had been the rule, custom, habit, practice and system in the City of Carrollton to assess and cause to be assessed the real estate therein at an average of not more than forty per cent. of its fair cash value, and to assess and cause to be assessed personal property in that city at an average of not more than thirty per cent. of its fair cash value; that the assessment made by the State Board upon which taxes were sought to be recovered was made at 100 per cent. of the fair cash value of the whiskey, and that the attempt of the plaintiff to collect the same was in violation of the defendant's right under the constitution of the State of Kentucky and the Fourteenth Amendment of the Constitution of the United States.

The Circuit Court gave judgment in favor of the city for the amounts claimed under the new levy of 1916, giving credit for the amounts paid under the original levies for the preceding years. The company appealed to the Court of Appeals of Kentucky, where the judgment of the Circuit Court was affirmed. 178 Kentucky, 561. There was no other reference to the Federal Constitution than that contained in the answer, so far as we have been able to discover, and the Court of Appeals dealt with the federal question, deemed to be before it, as follows (178 Kentucky, 566):

"It is further asserted that the recent cases of *Greene* v. *Louisville & Interurban Railroad Co.* and *Greene* v. *Louisville Railway Co.*, decided by the Supreme Court of the United States and reported by 37 Supreme Court Reports, 673, uproot the contention that the act is constitutional, and hold that the State Board of Valuation, and the city assessor and Board of Supervisors, acting independently of each other, and fixing different valuations

of the same property, work a discrimination, inimical both to the federal and state constitutions. In this, however, appellant is in error. It must be borne in mind that complaint is only made of the assessment. The warehouseman had his remedy, in case of an excessive or unfair valuation, by appearing before the Board of Valuation and Assessment at the time he received notice of the valuation fixed, and there make complaint as provided in section 4107, Kentucky Statutes. This appellant failed to do but acquiesced in the assessment by paying taxes both to the county and state on the valuation fixed by the State Board. This being true, it cannot be heard to complain now."

The case is brought here by the allowance of a writ of error. As the judgment was rendered after the Act of September 6, 1916, c. 448, 39 Stat. 726, Judicial Code, § 237, became effective, that act must determine the right to have a review in this court.

If the case can come here by writ of error, it is because there was drawn in question the validity of a statute, or authority, exercised under the State on the ground of their being repugnant to the Constitution, laws, or treaties of the United States. Before the petition for rehearing the contentions based upon constitutional grounds, by the plaintiff in error, were those embraced in the nineteenth paragraph of the answer, to which we have referred, and such as were deemed to be before the Court of Appeals of Kentucky in the portion of the opinion from which we have quoted. Neither the answer nor the opinion of the Court of Appeals shows that any claim under the Federal Constitution was made assailing the validity of a statute of the State, or of an authority exercised under the State, on the ground of repugnancy to the Federal Constitution. The answer, in the nineteenth paragraph, set up discrimination because of different valuations of the property of others, claimed to violate

rights secured by the Fourteenth Amendment to the Constitution of the United States. The opinion of the Court of Appeals likewise discussed the discriminatory action alleged by the plaintiff in error.

Drawing in question the validity of a statute or authority as the basis of appellate review has long been a subject of regulation in statutes of the United States, as we had occasion to point out in *Champion Lumber Co.* v. *Fisher*, 227 U. S. 445, 450, 451. What is meant by the validity of a statute or authority was discussed by this court in *Baltimore & Potomac R. R. Co.* v. *Hopkins*, 130 U. S. 210, in which this court, speaking by Mr. Chief Justice Fuller, said: "Whatever the power to enact a statute as it is by its terms, or is made to read by construction, is fairly open to denial and denied, the validity of such statute is drawn in question, but not otherwise." And the Chief Justice added upon the authority of *Millinger* v. *Hartupee*, 6 Wall. 258, 261, 262, that the word "authority" stands upon the same footing.

In order to give this court jurisdiction by writ of error under amended § 237, Judicial Code, it is the validity of the statute or authority which must be drawn in question. The mere objection to an exercise of authority under a statute, whose validity is not attacked, cannot be made the basis of a writ of error from this court. There must be a substantial challenge of the validity of the statute or authority upon a claim that it is repugnant to the Federal Constitution, treaties, or laws so as to require the state court to decide the question of validity in disposing of the contention. *Champion Lumber Co.* v. *Fisher*, supra, and cases cited.

In the present case no such claim of the invalidity of a state statute or authority was raised in a manner requiring the court below to pass upon the question in disposing of the rights asserted. As we have said, whatever the effect of a petition for rehearing, it came too late

1. Counsel for Parties.

to make the overruling of it, in the absence of an opinion, the basis of review by writ of error. It follows that the allowance of the writ of error in the present case did not rest upon a decision in which was drawn in question the validity of a statute of the State or any authority exercised under it because of repugnancy to the Federal Constitution, and the writ of error must be dismissed, and it is so ordered.

Dismissed.